

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

William J. Keese, Chairman, Associate Member

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Roberta Mendonca, Public Adviser

Kerry Willis, Staff Counsel

Paul Richins, Project Manager

Steve Munro, Compliance Project Manager

APPLICANT

Jeffrey D. Harris
Ellison, Schneider & Harris, LLP

John Carrier, CH2MHILL

Kenneth Abreu, Project Manager

Steve DeYoung

INTERVENORS

Scott Scholz

Elizabeth Cord, STCAG

Issa Ajlouny

Robert F. Williams

Michael E. Boyd, CARE

Jeff Wade

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Good
3 afternoon.

4 We are here for the purpose of
5 conducting the Evidentiary Hearing on the Metcalf
6 Energy Center Power Project. My name is Robert
7 Laurie. I am a Commissioner at the California
8 Energy Commission, and Presiding Member of the two
9 Commission member Committee hearing this case
10 which will, in turn offer recommendations to the
11 full Commission.

12 The gentleman to my far left is Mr. Bill
13 Keese. Mr. Keese is Chairman of the California
14 Energy Commission, and my second on this
15 Committee.

16 To my immediate left is Mr. Stan
17 Valkosky. Mr. Valkosky is our Hearing Officer
18 assigned to this case. Mr. Valkosky will
19 administer these proceedings throughout the course
20 of the days.

21 Just a note, as we go through the
22 process that we're going to be following. It will
23 be noted that this is a much more formalistic
24 process than that which we have been conducting
25 over the last couple of months and evidentiary

1 procedures. This is something very close to an
2 evidentiary trial, and so you will find that there
3 are rules of procedure to be followed, and, as
4 necessary, we will call those to all of your
5 attention as time may go on, and as may be
6 necessary.

7 At this point I would ask Chairman Keese
8 if you have any opening comments. Mr. Keese.

9 CHAIRMAN KEESE: Thank you, Commissioner
10 Laurie.

11 Now, I know, having participated in the
12 earlier hearings on this, that we're now coming to
13 the crunch time. We didn't set any hearings in
14 December, as we had originally planned. We have,
15 I believe, set eight days of hearings for January.
16 I hope -- my hope would be that we didn't need to
17 take all of those days on those issues that we had
18 outlined, that we could find a -- a faster way to
19 handle some of the -- I'll call them trivial early
20 issues. There are some major issues in this case,
21 major substantive issues, and those are the ones
22 on which we should focus.

23 Today and tomorrow's hearing is on the
24 early aspects of this. And it's just my hope, Mr.
25 Chairman, that we can find a way to move through

1 this as expeditiously as possible, get all the
2 evidence before us so that we can make our
3 recommendation to the full Commission.

4 Thank you.

5 PRESIDING MEMBER LAURIE: Thank you,
6 sir.

7 Before we proceed, I'd like to note that
8 this proceeding is being recorded. The
9 microphones that are on the tables before you are
10 both recording microphones and amplifying
11 microphones. I know we've had a problem in the
12 past getting sufficient amplification. That
13 should not be a problem today.

14 If at any time there is a problem with
15 the recordation, the recorder will let us know and
16 we'll stop the proceeding. It's very important
17 that everything said be officially recorded today.

18 At this time I would ask Mr. Valkosky
19 to, in turn, A, seek an introduction of the
20 parties present, and talk a little bit about the
21 procedures that we're going to be following today.

22 Mr. Valkosky.

23 HEARING OFFICER VALKOSKY: Thank you,
24 Commissioner Laurie.

25 Mr. Harris, would you introduce those at

1 the table on behalf of the Applicant.

2 MR. HARRIS: Yes, thank you.

3 My name is Jeff Harris, with Ellison,
4 Schneider and Harris, and I'm here on behalf of
5 the Calpine/Bechtel Joint Venture.

6 To my right is Mr. Ken Abreu, who's the
7 Project Manager for the joint venture. Immediate
8 left is Steve DeYoung, who's a Project Manager, as
9 well. And Steve -- excuse me, to his left, is
10 John Carrier, with CH2MHILL.

11 HEARING OFFICER VALKOSKY: Thank you.

12 Ms. Willis.

13 MS. WILLIS: Thank you.

14 I'm Kerry Willis, Staff Counsel for the
15 Staff of the Energy Commission. To my right is
16 Steve Munro, who is the Compliance Manager, and
17 witness in the general compliance area. Also is
18 Paul Richins, who is the Project Manager on the
19 project.

20 In the audience we have Bob Anderson,
21 who will be testifying in Geology; Steve Baker,
22 who will be testifying in Facilities Design,
23 Efficiency and Reliability; and Mike Ringer, who
24 will be testifying in Waste Management.

25 HEARING OFFICER VALKOSKY: Okay. And

1 now the members of the public who have intervened
2 in this proceeding. If you could introduce
3 yourselves, and if you are representing an
4 organization indicate which organization.

5 Mr. Scholz.

6 MR. SCHOLZ: My name is Scott Scholz.
7 I'm a local resident to the project. I'm an
8 Intervenor.

9 HEARING OFFICER VALKOSKY: Ms. Cord.

10 MS. CORD: I'm Elizabeth Cord. I'm
11 representing the Santa Teresa Citizen Action Group
12 and the 8,000 people who have a concern today in
13 today's proceedings.

14 MR. AJLOUNY; Issa Ajlouny, local
15 resident, Intervenor.

16 MR. WILLIAMS: I'm Robert Williams. I
17 am a retired engineer. I represent myself. I
18 hold degrees in nuclear engineering, chemical
19 engineering, and a Master's degree in business
20 administration.

21 HEARING OFFICER VALKOSKY: Mr. Boyd.

22 MR. BOYD: I'm Mike Boyd, and I'm the
23 President of Californians for Renewable Energy,
24 CARE.

25 HEARING OFFICER VALKOSKY: Thank you.

1 PRESIDING MEMBER LAURIE: Do we have
2 anybody representing the Public Adviser's Office?

3 Ms. Mendonca.

4 HEARING OFFICER VALKOSKY: I'm sorry.

5 Roberta, is there any introductory
6 remarks you wish to offer?

7 PUBLIC ADVISER MENDONCA: Hello. I'm
8 Robert Mendonca, the Energy Commission Public
9 Adviser, and I have no specific prepared remarks
10 today.

11 Thank you.

12 PRESIDING MEMBER LAURIE: Ms. Mendonca,
13 because this is the first meeting of the
14 evidentiary portion of the matter, could you take
15 a minute and briefly review the role of the -- of
16 the Public Adviser's Office, please?

17 PUBLIC ADVISER MENDONCA: Yes. Thank
18 you very much.

19 Our Public Adviser's role at the Energy
20 Commission is quite unique, and not -- it's not
21 common in state agencies to have a person
22 specifically delegated to handle requests from the
23 public, people that might want to know about our
24 process and how to participate in our process.

25 The Public Adviser is not a decision

1 maker. You see the decision makers before you
2 today. And also, the Public Adviser is not a
3 member of the Staff. You see the Staff over here.
4 They're charged with the analysis of the
5 information submitted by the Applicant.

6 Rather, the Public Adviser serves as a
7 resource and a place where the public can come
8 with their questions about meetings, questions
9 about process, and their questions about how do I
10 participate.

11 So that's basically what the Public
12 Adviser has been doing in the Metcalf case. I've
13 been to most, if not all, of the public meetings
14 in Metcalf and have worked with anyone that has
15 contacted my office desiring to know about the
16 process going on today.

17 PRESIDING MEMBER LAURIE: Thank you very
18 much.

19 HEARING OFFICER VALKOSKY: By way of
20 background, I'd like to note that this is the
21 first set of Evidentiary Hearings for the proposed
22 Metcalf Energy Center. The Committee noticed the
23 hearings scheduled for today and tomorrow, as well
24 as the continued Prehearing Conference, in a
25 notice and order issued on December 5th, year

1 2000. That document also contained filing dates
2 for testimony pertinent to the topics we're going
3 to discuss today.

4 In addition to the Staff Assessment,
5 which was released in October, as well as the AFC
6 document and its associated supplements, other
7 filings pertinent to today's set of hearings
8 include Applicant's Group 1 testimony, which was
9 filed December 7th; CARE's prehearing brief, filed
10 on December 20th; Applicant's witness substitution
11 filed on December 26th; Applicant's rebuttal
12 testimony on Cultural Resources dated December
13 29th; and Staff's Group 1 changes filed January
14 4th.

15 The parties should have in front of
16 them, and there are copies at the table out there,
17 two documents. One is entitled a Tentative
18 Exhibit List. This is nothing more than a
19 sequential listing of documents which have been
20 submitted and which we'll refer to in formulating
21 the record.

22 The other is a single sheet, entitled
23 the Topic and Witness Schedule for the January
24 8th, 2001, Evidentiary Hearing. It is identical
25 to the attachment that was on the notice, but I

1 provided everybody copies, just in case you've
2 lost yours.

3 The purpose of these formal Evidentiary
4 Hearings is to establish the factual record
5 necessary to reach a decision in this case. This
6 is done through the taking of written and oral
7 testimony, as well as exhibits from the parties.
8 These hearings are more structured, as
9 Commissioner Laurie noted, than the Committee
10 conferences and the informal Staff workshops which
11 have already occurred.

12 In brief, a -- a party sponsoring a
13 witness shall briefly establish the witness's
14 qualifications, and have the witness orally
15 summarize prepared testimony before questioning --
16 excuse me, before requesting that the testimony be
17 moved into evidence. Relevant exhibits may be
18 offered into evidence at that time, as well.

19 At the conclusion of a witness's direct
20 testimony, the Committee will provide all other
21 parties an opportunity for cross examination.
22 That'll then be followed by redirect and recross
23 examination, if appropriate.

24 At the conclusion of each topic area, we
25 will provide an opportunity for general public

1 comment on that topic area.

2 As mentioned in the notice, the parties
3 are encouraged to consolidate presentation by
4 witnesses and/or cross examination to the greatest
5 extent possible, in order to minimize duplication
6 and conserve hearing time.

7 Before we begin, I'd like to point out a
8 few things, especially for the lay Intervenors.

9 First, and again, as I think everyone
10 realizes, unless you have prefiled testimony for
11 your witness, as directed in the hearing order,
12 you will not be allowed to have the witness offer
13 direct testimony.

14 When cross examining a witness, don't be
15 repetitive in asking the question. If the
16 question has been asked before, that's sufficient
17 for purposes of the record. It need not be re-
18 asked several times.

19 Several parties interested in the same
20 matter should consolidate their presentations or
21 their questioning, if at all possible. And again,
22 that's purely to conserve the limited time we
23 have.

24 Next, the questioning must be limited to
25 relevant matters within the scope of the witness's

1 testimony. For example, if a witness is
2 testifying on Geology, you can't ask him any
3 questions on Cultural Resources or something
4 that's unrelated to his field of expertise. It's
5 got to be within the scope of his testimony.

6 I'd also like to advise all parties not
7 to argue with the witness. A lot of times the
8 witnesses will not give the answers that a party
9 would desire. That's what it is. You know, the
10 answer is -- is the witness's answer. The
11 witnesses will all be under oath or affirmation.

12 PRESIDING MEMBER LAURIE: Mr. Valkosky,
13 would you also discourage the parties from arguing
14 with the members of the Committee.

15 (Laughter.)

16 HEARING OFFICER VALKOSKY: But, of
17 course. As I would discourage the members of the
18 Committee from arguing with one another.

19 (Laughter.)

20 HEARING OFFICER VALKOSKY: And me.

21 Next, I'd like to remind the parties,
22 don't testify while you're cross examining a
23 witness. Cross examination is intended to elicit
24 a response from that witness. It's not to get
25 your opinion on something, or -- or something that

1 you would -- you would desire to testify to.

2 When asking a question it's helpful if
3 you can refer to a specific page of the witness's
4 testimony, and/or the exhibit he's sponsoring.
5 For example, if you've got a question on something
6 the witness has in his testimony on page 5, refer
7 to that. Guide the witness and as well as the
8 Committee, so that we can see what the question
9 is.

10 Direct testimony must be on matters
11 within the witness's personal knowledge. There
12 are somewhat different rules for witnesses who
13 qualify as experts. Experts, by virtue of their
14 education and experience, are allowed to render
15 expert opinion based on studies, reports, and
16 everything in similar information which they may
17 not have personally authored, but which they have
18 reviewed.

19 Anyway, with those cautions, are there
20 any questions?

21 MR. AJLOUNY: Yes. Intervenor Issa
22 Ajlouny.

23 I don't recall receiving anything about
24 the January 4th changes. I asked the two
25 intervenors next to me, also. They have not,

1 either.

2 HEARING OFFICER VALKOSKY: Mr. Richins.
3 The question was Intervenors indicate they haven't
4 received the January 4th Staff changes.

5 MR. RICHINS: I brought extra copies for
6 anyone that needs a copy.

7 HEARING OFFICER VALKOSKY: I think it
8 would be best to provide them to the Intervenors
9 at this time.

10 Were they mailed out January 4th?

11 MR. RICHINS: Yes, they were.

12 (Pause.)

13 HEARING OFFICER VALKOSKY: I'll note for
14 the record that the document which Mr. Richins has
15 distributed is what's tentatively Exhibit --
16 identified as Exhibit 11, and contains a minor
17 change to a Facility Design condition, I believe,
18 as well as a revised version of a Cultural
19 Resources condition. Is that correct, Mr.
20 Richins?

21 MR. RICHINS: Yes, sir.

22 HEARING OFFICER VALKOSKY: Also notice
23 that Cultural Resources is on the agenda for
24 tomorrow.

25 Okay. With that, and before we get into

1 the evidentiary presentations, Ms. Willis, do you
2 have any statement of counsel on the Need
3 Conformance section of the Staff Assessment?

4 MS. WILLIS: We don't have any formal
5 statement. We would like to enter that -- the
6 Need Statement, as well as the Executive Summary
7 into the record.

8 HEARING OFFICER VALKOSKY: We'll take
9 the whole Staff Assessment eventually. But you
10 would like to offer that into evidence at this
11 time?

12 MS. WILLIS: Yes, we would.

13 HEARING OFFICER VALKOSKY: That portion
14 of it? Okay.

15 Mr. Harris, do you have any statements
16 on Need Conformance as it's --

17 MR. HARRIS: Nothing -- nothing
18 additional, no.

19 HEARING OFFICER VALKOSKY: Okay. So is
20 it fair to say that you're in agreement with
21 Staff's legal opinion as contained in the Staff
22 Assessment?

23 MR. HARRIS: Yes. I think we've
24 indicated that in the past, and we are in
25 agreement with Staff's position.

1 HEARING OFFICER VALKOSKY: Okay.

2 Anything else on the Need Conformance?

3 Okay.

4 MR. BOYD: I have a question.

5 HEARING OFFICER VALKOSKY: Mr. Boyd.

6 MR. BOYD: What do you mean by Need
7 Conformance? Need -- need for this power plant?

8 HEARING OFFICER VALKOSKY: We're
9 referring to the old statutory Need Conformance
10 test that was contained in the Public Resources
11 Code. As Staff Counsel has indicated in the Staff
12 Assessment, that need test has been changed and
13 has been eliminated by subsequent legislation.

14 MR. BOYD: By SB 110. Is that what
15 you're referring to?

16 HEARING OFFICER VALKOSKY: That's
17 correct.

18 MR. BOYD: But that -- that's not on the
19 list of things we're talking --

20 HEARING OFFICER VALKOSKY: I mentioned
21 it at the Prehearing Conference. This is not an
22 evidentiary issue.

23 MR. BOYD: Oh, okay. Thank you.

24 HEARING OFFICER VALKOSKY: Okay. With
25 that, we'll admit that portion of Staff

1 Assessment, Exhibit 7.

2 (Thereupon the Need Conformance portion
3 of Exhibit 7 was received into
4 evidence.)

5 HEARING OFFICER VALKOSKY: All right.
6 The first substantive topic on today's agenda is
7 Project Description.

8 I'd like to -- yeah, at this time we're
9 having witnesses testify. Since we have room at
10 the corner of the table, we'd prefer to have the
11 witness testify from that spot. Right there by
12 the gentleman with the camera in his hand.

13 (Laughter.)

14 HEARING OFFICER VALKOSKY: We'll go off
15 the record for a minute.

16 (Off the record.)

17 HEARING OFFICER VALKOSKY: Okay, back on
18 the record.

19 Mr. Harris, your witness on Project
20 Description.

21 MR. HARRIS: Thank you, sir.

22 Could you --

23 HEARING OFFICER VALKOSKY: Could you
24 swear the witness, please.

25 ///

1 (Thereupon Kenneth Abreu was, by the
2 reporter, sworn to tell the truth, the
3 whole truth, and nothing but the truth.)

4 TESTIMONY OF

5 KENNETH E. ABREU

6 called as a witness on behalf of Applicant, having
7 been first fully sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. HARRIS:

11 Q Could you please state your name for the
12 record.

13 A Kenneth E. Abreu.

14 Q And, Mr. Abreu, what subject matter
15 testimony are you here to sponsor today?

16 A Project Description.

17 Q And specifically which documents are you
18 sponsoring as part of your testimony?

19 A It's Sections 1, 2, 3, 4 and 6 of the
20 AFC; supplements A and C to the AFC, including the
21 supplement to the Errata Sheet; Supplemental
22 Filing Location of Gas Metering Station; Response
23 to CEC Data Requests 41, 42, 43, 44, 45, 184, and
24 239. Response to Jeff Wade Data Requests 26, 60,
25 61, 68, and 69. Response to Coyote Valley Data

1 Requests 5A, 5B, and 5C of Set 1 and Set 4B. And
2 the list of supporters attached.

3 MR. HARRIS: For clarification on the
4 document tracking, sections of the AFC that's
5 noted as Exhibit 1, the second item, Supplements A
6 and C, Supplement A is Exhibit 3, and Supplement C
7 is Exhibit 5.

8 I believe the rest of the documents are
9 not on the existing exhibit list, and should be
10 added. And, of course, the testimony itself, Mr.
11 Abreu, is the 6A testimony. So those are the
12 documents.

13 HEARING OFFICER VALKOSKY: Okay. Mr.
14 Harris, do you have a list of the supplemental
15 documents, we could assign them exhibit numbers?

16 MR. HARRIS: I'm sorry. I'm not sure I
17 understand the question.

18 HEARING OFFICER VALKOSKY: Well, I
19 thought you indicated that you wanted to offer, to
20 move the data responses and things like that as
21 exhibits.

22 MR. HARRIS: Yes, we would.

23 HEARING OFFICER VALKOSKY: Okay. I'd
24 like to identify them --

25 MR. HARRIS: Okay.

1 HEARING OFFICER VALKOSKY: --

2 specifically, and assign them numbers.

3 MR. HARRIS: Okay. I'm sorry, I
4 understand now.

5 We'll go through them. As I indicated,
6 the first two bullet items in the prior filing
7 section have already been added to the exhibit
8 list.

9 The third filing is Supplemental Filing,
10 Location of the Gas Metering Station. We have a
11 copy of that, and I guess I would suggest that
12 that become the next item in your exhibit list.

13 HEARING OFFICER VALKOSKY: That'll be
14 Exhibit 12.

15 (Thereupon Exhibit 12 was marked
16 for identification.)

17 MR. HARRIS: Okay. The next item would
18 be the response to CEC Data Requests, and the
19 numbers listed there, 41 through 45, 184, and 239.

20 HEARING OFFICER VALKOSKY: We'll
21 identify that as Exhibit 13.

22 (Thereupon Exhibit 13 was marked
23 for identification.)

24 MR. HARRIS: Okay. Actually, there are
25 -- those are -- exhibits -- I mean, those are data

1 requests out of three different sets of data
2 responses, and those responses are, again, okay,
3 Data Responses 41, 42, 43, 44, 45, are out of
4 Responses Set 1A. So I'd move that in as the next
5 document.

6 HEARING OFFICER VALKOSKY: Okay. Well,
7 that's Exhibit 13. All right?

8 MR. HARRIS: Okay.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. HARRIS: Data Request 184 is from
11 Set 2B. So I'd move that in as the next document.

12 HEARING OFFICER VALKOSKY: Fourteen.

13 (Thereupon Exhibit 14 was marked
14 for identification.)

15 MR. HARRIS: And Data Request 239 is
16 part of Set 4A. I would ask that to go as the
17 next document.

18 HEARING OFFICER VALKOSKY: We'll
19 identify that as Exhibit 15.

20 (Thereupon Exhibit 15 was marked
21 for identification.)

22 HEARING OFFICER VALKOSKY: These are all
23 identified in Mr. Abreu's testimony; correct?

24 MR. HARRIS: Yes, they are, sir.

25 The next item would be the responses to

1 Jeff Wade Data Request, and I believe that's one
2 document. Is that correct? Actually, the one is
3 also two documents. Jeff Wade Set 1A, and Jeff
4 Wade Set 2.

5 HEARING OFFICER VALKOSKY: Okay. We'll
6 give that Number 16.

7 (Thereupon Exhibit 16 was marked
8 for identification.)

9 MR. HARRIS: Okay. Response to Coyote
10 Valley Data Request 5A, 5B and 5C, those are of
11 Set 1. So that's a separate document.

12 HEARING OFFICER VALKOSKY: Seventeen.

13 (Thereupon Exhibit 17 was marked
14 for identification.)

15 MR. HARRIS: And Set 4B.

16 HEARING OFFICER VALKOSKY: As a separate
17 exhibit? Set 4B is a separate exhibit?

18 MR. HARRIS: Yes, it is. It's a
19 separate response to the data request.

20 HEARING OFFICER VALKOSKY: That'll be
21 Exhibit 18.

22 (Thereupon Exhibit 18 was marked
23 for identification.)

24 MR. HARRIS: Okay. Actually, the list
25 of report -- support is attached to this, which is

1 already identified as 6A. So, yeah.

2 Okay, well, that's going to be the fun
3 part of the proceeding, tracking all these.

4 Should I proceed?

5 HEARING OFFICER VALKOSKY: Please.

6 BY MR. HARRIS:

7 Q Mr. Abreu, do you have any changes or
8 corrections to your testimony?

9 A No.

10 Q Thank you. And were these documents
11 prepared either by you or at your direction?

12 A They were prepared at my direction.

13 Q And are the facts stated therein true to
14 the best of your knowledge?

15 A Yes.

16 Q And are the opinions stated therein your
17 opinions?

18 A Yes.

19 Q And do you adopt these today as your
20 testimony for this proceeding?

21 A Yes.

22 Q Could you briefly review your
23 qualifications for us, please?

24 A I've worked in the electric power
25 industry for over 20 years, 20 years with PG&E and

1 two years for Calpine. I've worked on the
2 development of power generation in fossil power
3 generation, as well as renewable power generation.
4 I've worked on research and development in power
5 generation. I've worked in fuel procurement.
6 I've worked in the power contracts area.

7 I have a Master's degree from UC
8 Berkeley in mechanical engineering, a Bachelor's
9 degree from San Jose State University in general
10 engineering and computer science. I'm a
11 registered mechanical engineer in the State of
12 California.

13 Q And what is your current position with
14 Calpine?

15 A I'm a development manager.

16 Q Okay. Thank you.

17 Could you please provide us with a
18 summary now of your testimony for Project
19 Description?

20 A Okay. Thank you.

21 Mr. Valkosky, Commissioners Laurie and
22 Keese, the Metcalf Energy Center is a 600 megawatt
23 natural gas fuel combined cycle power plant. The
24 objectives of the project were to put a generation
25 facility in the Silicon Valley/San Jose area, to

1 do it in a way so as to minimize the cost to
2 electric consumers, to do it in a way so as to
3 minimize environmental impacts of supply into this
4 area, and to maximize the reliability benefits
5 into this critical area in terms of our economy.

6 The project is a part of a program that
7 Calpine and Bechtel have of doing four projects
8 within the Bay Area, and is a showcase plant for
9 our projects in our home area.

10 In terms of the key features of the
11 project, from a economic point of view, the
12 project is using combined cycle technology with
13 modern technology, combustion turbines, two of
14 those, and one reheat steam turbine to maximize
15 efficiency. This will allow the plant to produce
16 electricity in such a way that an old existing
17 plant might have to burn 40 percent more fuel to
18 produce the same power as the Metcalf Energy
19 Center would.

20 As will be shown in some of our other
21 testimony, this will produce an economic benefit
22 of several hundred million dollars per year for
23 consumers here in California.

24 The project is also located in an area
25 to so as minimizing costs, it's adjacent to or

1 about a quarter mile from the Metcalf Substation
2 of PG&E in the southern part of San Jose, on the
3 western side of Monterey Highway. This location
4 allows us to connect without any additional
5 transmission towers being needed, or any upgrades
6 to the electric system, thus affording electric
7 consumers a minimal cost for the supply of this
8 power, and with minimal electrical losses because
9 we are putting the power in at the load center.

10 Several other of the features of the
11 plant were designed to minimize the environmental
12 impacts of providing supply into this area. As I
13 mentioned before, the project requires no
14 transmission towers. Our gas, it's only 240 foot
15 stringing up from our plant site to the
16 transmission tower we will connect to, which is
17 existing. We have about a one mile gas connection
18 to PG&E's main gas line that runs along Highway
19 101, about a mile to the east of our project site.

20 From a water supply perspective, the
21 project is going to use recycled water. It will
22 probably be the largest user of recycled water in
23 San Jose's system. This will provide substantial
24 environmental benefits to San Francisco Bay's
25 sensitive salt marsh habitat, thus protecting two

1 endangered species and allowing the City of San
2 Jose to more easily meet its flow cap restrictions
3 of flowing water into South San Francisco Bay.

4 Our pipeline route of receiving the
5 recycled water is about ten miles. That route is
6 part of -- of the city's long-term plans for the
7 development of their recycled water system.

8 The project is also adjacent to the main
9 rail line in the area. This will allow us to
10 install a temporary rail spur during construction,
11 so that large pieces of the equipment for the
12 plant can be delivered with a minimum of traffic
13 impact to the local environment.

14 The site is an isolated and remote site
15 in the very northern tip of Coyote Valley,
16 surrounded on two sides by Tulare Hill, a large
17 hill taller than any structure in the plant, and
18 with a large transmission corridor immediately to
19 the north, and the substation I mentioned to the
20 east.

21 Other features of the plant include a
22 plume abated wet/dry cooling tower, so that
23 visibility of the plume can be eliminated during
24 cold weather conditions.

25 The land planned to be built on is about

1 -- there's 20 acres of flatland at this northern
2 tip of Coyote Valley. Part of that land is in the
3 county, part of that land is in the city. We
4 also, as part of the project, will be dedicating
5 116 acres of Tulare Hill which is a sensitive
6 habitat for endangered species, and maintaining
7 that for endangered species adjacent to the plant
8 site, as part of mitigation.

9 We also have an additional 15 acres on
10 Coyote Ridge of prime habitat for the endangered
11 Bay Checker Spot Butterfly that will be dedicated
12 and maintained as part of the project. Also, the
13 riparian corridor along Fisher Creek and wetlands
14 will be cleaned up and enhanced as part of the
15 project. And, in fact, of all the land that the
16 plant is going to be impacting, only six percent
17 of it is for the plant facilities.

18 The rest is improved habitat. This
19 includes extensive landscaping along our access
20 road, and on the plant site, as well as
21 landscaping along Monterey Road on the property
22 that belongs to the city in that area, thus
23 enhancing that area.

24 The plant is somewhat unique in that it
25 has a world-class architectural treatment to

1 further assure its consistency with the
2 surrounding uses. The architectural treatment is
3 one that we are still willing to work with the
4 City of San Jose and Coyote Valley Research Park
5 on enhancing to ensure its compatibility to the
6 maximum extent with future developments to the
7 south in Coyote Valley. We'll also be planting
8 800 trees in the area.

9 From an air emissions control point of
10 view, we're using dry low NOx combusters with F
11 technology to reduce our NOx, CO and organics
12 emissions, as well as an SCR system with aqueous
13 ammonia. This will allow power to be reliably
14 supplied into the Silicon Valley without the
15 problems that are seen now on high load days of
16 high emitting diesel generators generating power
17 in this area, which far exceeds the emissions of
18 Metcalf Energy Center.

19 From a reliability point of view, of
20 course we're in an area here where electric
21 reliability is very important. The Internet
22 economy, the growth of data location facilities
23 and so forth, the plant will be designed for a 92
24 to 98 percent reliability with redundant
25 equipment.

1 Given the current crisis in the electric
2 supply here in California, in terms of the high
3 cost and lack of supply, we feel the Metcalf
4 Energy Center is the right project at the right
5 place, here in Silicon Valley, at the right time.
6 We enjoy a broad spectrum of support, including
7 26,000 citizens of San Jose who are active
8 supporters of the project.

9 Key consumer groups, like TURN, key
10 environmental groups, like the local chapter of
11 the Sierra Club and the local chapter of the
12 American Lung Association, the local newspapers,
13 like the San Jose Mercury News and Business
14 Journal have endorsed the project, as -- as well
15 as both state and local labor organizations,
16 business organizations, and the local chamber of
17 commerce.

18 As we begin the Evidentiary Hearings on
19 this project, a project that we think is one of,
20 if not the most important project the Commission's
21 ever had to consider, I want to tell you that the
22 Metcalf team looks forward to working with you in
23 a professional and thorough manner, that we'll
24 cooperate in the fullest with the Committee to
25 assure that you have what you need to carry out

1 your duties for the people of the State of
2 California.

3 Q Thank you for that summary, Mr. Abreu.

4 A couple of questions now, before I make
5 you available for cross examination.

6 There are no Conditions of Certification
7 associated with the Project Description, but
8 you've had a chance to review the Final Staff
9 Assessment for this topic matter, have you not?

10 A Yes.

11 Q And reviewing that, do you find that
12 you're in agreement with the conclusions set forth
13 in the Final Staff Assessment?

14 A Yes.

15 MR. HARRIS: Thank you.

16 At this time, if it's appropriate, I'd
17 like to move the documents into evidence, if -- if
18 that's appropriate.

19 HEARING OFFICER VALKOSKY: Is there
20 objection?

21 MS. WILLIS: None.

22 MR. WILLIAMS: Point of clarification,
23 if I --

24 HEARING OFFICER VALKOSKY: One -- one
25 second, Mr. Williams.

1 Is there objection to moving that
2 portion, Mr. Abreu's portion of the Exhibit 6A
3 into evidence at this time?

4 MR. WILLIAMS: That's -- that's the
5 nature of my question --

6 MR. BOYD: What --

7 HEARING OFFICER VALKOSKY: That's their
8 December 7th testimony. That's the prepared
9 testimony. Look on the exhibit list, Mike.

10 MR. BOYD: There -- is this it?

11 HEARING OFFICER VALKOSKY: Off the
12 record, please.

13 (Off the record.)

14 HEARING OFFICER VALKOSKY: Mr. Williams.

15 MR. WILLIAMS: I have a question before
16 we continue.

17 This is the first area. Will there be a
18 member of the CEC Staff who testifies as to the
19 Project Description?

20 HEARING OFFICER VALKOSKY: Yes.

21 MR. WILLIAMS: Okay.

22 HEARING OFFICER VALKOSKY: Yeah. That
23 is listed on the agenda for today. Mr. Richins is
24 listed as that witness.

25 There is no objection to that portion of

1 6A. That'll be received into evidence.

2 (Thereupon the Project Description
3 portion of Exhibit 6A was received
4 into evidence.)

5 HEARING OFFICER VALKOSKY: Before we go
6 to cross, I've got a couple clarifying questions.

7 MR. HARRIS: Mr. Valkosky, a question.

8 HEARING OFFICER VALKOSKY: I'm sorry.

9 MR. HARRIS: What about the rest of the
10 documents that --

11 HEARING OFFICER VALKOSKY: You're
12 offering them all, or --

13 MR. HARRIS: Well, I'm asking you what
14 -- the question, actually. What would you prefer?
15 Would you prefer that we offer them all into
16 evidence now, move them into evidence now, or at
17 the end of this subject?

18 HEARING OFFICER VALKOSKY: Well, again,
19 are any of these exhibits, do any of these
20 exhibits need to be sponsored by other witnesses?
21 That's the question.

22 MR. HARRIS: Okay, I'm clear now on --

23 HEARING OFFICER VALKOSKY: Okay.

24 MR. HARRIS: -- on the -- so, okay. Let
25 us check, while you're --

1 HEARING OFFICER VALKOSKY: Right. If
2 the answer is yes, move them in at the conclusion
3 of the sponsorship. If there's any that's -- that
4 pertain solely to Mr. Abreu's testimony, you can
5 move them at this time.

6 MR. HARRIS: On a quick review I think I
7 12 as the only one, the review of the gas metering
8 station, which is not sponsored by any other
9 witness.

10 HEARING OFFICER VALKOSKY: Okay.

11 MR. HARRIS: So we'd ask to move that,
12 as well.

13 HEARING OFFICER VALKOSKY: Is there any
14 objection to receiving Exhibit 12? It is noted in
15 that portion of Mr. Abreu's testimony as having
16 been previously docketed, Mr. Boyd. If you look
17 on --

18 MR. BOYD: So if it's previously
19 docketed, why is it part of the record here?

20 HEARING OFFICER VALKOSKY: This is part
21 of the formal hearing record.

22 MR. BOYD: Okay.

23 HEARING OFFICER VALKOSKY: It is --
24 being docketed, it is part of the administrative
25 record. We're just establishing the hearing

1 record.

2 MR. BOYD: Okay.

3 HEARING OFFICER VALKOSKY: At this time.
4 That's all.

5 MR. BOYD: I understand.

6 HEARING OFFICER VALKOSKY: Okay. No
7 objection?

8 MS. WILLIS: None.

9 HEARING OFFICER VALKOSKY: Objection to
10 Exhibit 12?

11 MR. BOYD: None.

12 HEARING OFFICER VALKOSKY: Okay.

13 (Thereupon Exhibit 12 was received into
14 evidence.)

15 HEARING OFFICER VALKOSKY: Does that
16 conclude your direct, Mr. Harris?

17 MR. HARRIS: Are we on the record again?

18 HEARING OFFICER VALKOSKY: Yes.

19 MR. HARRIS: Okay. Yes, that concludes
20 the direct. I would make the witness available
21 for cross.

22 HEARING OFFICER VALKOSKY: Okay. Before
23 we get to cross, I've got a few clarifying
24 questions for Mr. Abreu.

25 Does the Applicant have site control?

1 And I'm defining site control as either ownership
2 of the property or an option to purchase, or some
3 other legally enforceable mechanism.

4 THE WITNESS: Yes, we do.

5 HEARING OFFICER VALKOSKY: Okay. What
6 -- what part of the proposed facilities are in the
7 city, and what part are in the county
8 jurisdiction? If you could break that down.

9 THE WITNESS: I'll just give you sort of
10 a general idea, because it's not -- we didn't lay
11 out the plant in terms of what would be in the
12 city and what would be in the county.

13 The northern roughly two-thirds of the
14 project facilities would be in the county land,
15 and the southern third of that would be in the
16 city land. The part, then, that would be in the
17 city, would be like all the water treatment
18 buildings, control building, administration
19 building, water storage tanks, and areas such as
20 that. Also, probably the very southern part of
21 the heat recovery steam generators and stacks, and
22 so forth, would be in the part that's in the city,
23 and then the portions to the north would be in the
24 part that's in the county.

25 HEARING OFFICER VALKOSKY: Okay. So the

1 power generating facilities themselves, defined as
2 the turbines, the generators, and the heat
3 recovery steam generators, are -- sounds like it's
4 mostly in the county, except for the heat recovery
5 steam generators which are in the -- at least
6 partially in the city jurisdiction. Is that
7 correct?

8 THE WITNESS: Yeah, that looks right. I
9 would say in -- I could go back and check, but I
10 think actually most of the heat recovery boilers
11 might be in the -- in the city.

12 HEARING OFFICER VALKOSKY: In the city.
13 Okay. That's fine.

14 Could you -- and again, just very
15 briefly, summarize the major project changes that
16 were contained in Supplements A, B and C,
17 respectively, to the AFC?

18 THE WITNESS: A, B and C? Okay.

19 The project, basic project has stayed
20 the same, a 600 megawatt gas-fired power plant.
21 From the time that we filed until the time we made
22 those supplements, we had gotten some additional
23 information from the city and other parties to the
24 project which caused us to modify the project in a
25 way so as to further mitigate its impacts.

1 In Supplement A, the main thing was the
2 water pipeline route for recycled water. Between
3 the time we prepared our filing of the AFC and the
4 time we filed Supplement A, the city, South Bay
5 Water Recycling System focused on a specific route
6 which was their preferred route to bring recycled
7 water into Coyote Valley. So what we did in
8 Supplement A was incorporate that route into our
9 project precisely as they had developed it.

10 The other piece of information we got
11 from the city was in terms of our setback from
12 Fisher Creek, the riparian corridor, that they
13 very strongly felt it was very important that we
14 be 100 feet back from the creek. And so we had to
15 reorient our equipment so as to fit into that
16 hundred foot riparian setback, and so we
17 rearranged things a bit so we could get an optimal
18 layout.

19 We also have been asked from early on to
20 have a visual treatment that's compatible with the
21 development proposed for the south, the Coyote
22 Valley developments. And so we enhanced the
23 architectural treatment in Supplement B and in
24 Supplement C. And again, in Supplement C we had
25 gotten in put that they would like a -- a less

1 bulky type of visual impact, so we took off some
2 of the visual screening to make it less bulky.

3 HEARING OFFICER VALKOSKY: Okay. Thank
4 you.

5 You referred to the proposed power plant
6 as a -- as a, quote, nominal 600 megawatt plant.
7 My understanding is, is that that refers to --
8 inherently to a -- to a range of generation. Is
9 that a -- is that a correct assumption?

10 THE WITNESS: It --

11 HEARING OFFICER VALKOSKY: And let me
12 clarify that. In other words, that the plant
13 would not necessarily generate a maximum of 600
14 megawatts. Is that correct?

15 THE WITNESS: That's possible, Mr.
16 Valkosky. But I'd like to ask maybe for one of
17 the later witnesses that talks about Plant
18 Efficiency and Design could give you the more
19 specifics on --

20 HEARING OFFICER VALKOSKY: Fine.

21 THE WITNESS: -- on those.

22 HEARING OFFICER VALKOSKY: That's fine.

23 Mr. Harris, I take it you'll ask that
24 question of the appropriate witness.

25 MR. HARRIS: Yes, we will.

1 HEARING OFFICER VALKOSKY: Thank you.

2 Finally, Mr. Abreu, you indicate in your
3 testimony that you'll be relying upon the city and
4 the city's agreement for certain basic services,
5 such as sewer and water and as well as the
6 recycled water pipeline. Is there any reason to
7 suspect that that reliance may be changed in view
8 of the city's November action?

9 THE WITNESS: I think so, Mr. Valkosky.
10 The process we're going through now is to gather
11 the information, and for the Energy Commission to
12 make a decision on this project, on its benefits,
13 on its need, and on its Conditions of
14 Certification. We believe, given the critical
15 situation for electricity in the state and in the
16 Bay Area, and in Silicon Valley, that you'll find
17 and approve and override the city in their
18 decision on the land use for Metcalf Energy
19 Center.

20 At that point, the facts will be on the
21 table that this is a critically needed facility,
22 that its benefits to consumers in the State of
23 California are substantial, and that the questions
24 that the people at the City Council had have been
25 answered, in terms of safety and need and

1 compatibility. And going back to the city at that
2 time with that decision from the CEC in hand, we
3 would hope and expect that the city would
4 cooperate at that time in terms of moving this
5 important project forward for the good of the
6 area and the state.

7 HEARING OFFICER VALKOSKY: Okay. But
8 that is a hope and an expectation, rather than a
9 -- a guarantee, shall I say.

10 THE WITNESS: We don't have a guarantee
11 on that, Mr. Valkosky.

12 HEARING OFFICER VALKOSKY: Okay. Fair
13 enough. Thank you.

14 Ms. Willis, any cross examination?

15 MS. WILLIS: No.

16 PRESIDING MEMBER LAURIE: Before Ms.
17 Willis starts her questions, Mr. Valkosky, I want
18 to make sure that all parties and the Committee
19 understand what the cross examination may consist
20 of for this witness.

21 That is, this witness is basically
22 providing the project overview. Much of what this
23 witness testified to will have very specific
24 witnesses on very specific items, such as Water,
25 Air, Visual Impacts, et cetera. So when

1 questioning as to the cross examination on those
2 issues, he may very well indicate that those
3 specific questions should properly be reserved for
4 the witnesses that are going to be providing that
5 specific testimony.

6 Would that be consistent with your
7 understanding?

8 HEARING OFFICER VALKOSKY: Entirely
9 consistent. The specific instance when the
10 question I had on the nominal 600 megawatt rating,
11 I think that -- that is properly deferred to a
12 subsequent witness.

13 Okay. Ms. Willis.

14 MS. WILLIS: Staff does not have any
15 questions of this witness at this time.

16 HEARING OFFICER VALKOSKY: Okay. At the
17 Prehearing Conference, the Intervenors indicated
18 that CARE and Mr. Williams desired to conduct
19 cross examination. I understand, Mr. Boyd, that
20 CARE has subsequently withdrawn its request to
21 cross examine on Project Description; is that
22 correct?

23 MR. BOYD: I don't remember Project
24 Description. Paul gave me a whole list, and I
25 thought that when I said I wouldn't cross examine

1 on Transmission Line Safety, Waste Management --

2 MR. WILLIAMS: I'd be happy to go first,
3 Mr. Valkosky.

4 HEARING OFFICER VALKOSKY: Just -- just
5 a minute, Mr. Williams.

6 MR. BOYD: -- Worker Safety, and Fire
7 Protection. There was another one, wasn't there,
8 Paul? I -- I don't remember. I mean, I don't
9 have my e-mail right here. But I did -- I did not
10 waive my --

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. BOYD: -- as far as I'm aware, I
13 haven't waived my --

14 HEARING OFFICER VALKOSKY: That's --
15 that's fair. Do you wish to cross examine the
16 witness? Certainly.

17 Mr. Boyd.

18 CROSS EXAMINATION

19 BY MR. BOYD:

20 Q Okay. First, let's talk a little bit
21 about your qualifications. Have you had any
22 experience with any other sitings in the -- in the
23 state, other siting projects?

24 A Yes.

25 Q Can you tell me which ones those are?

1 A It's a pretty long list.

2 Q Okay. Well --

3 A Sure.

4 Q -- just like in the last five years,
5 say.

6 A Well, I worked, when I was at PG&E, on
7 the development of repowering a power plant in San
8 Francisco, Hunter's Point repowering. I also
9 worked on -- when I first came to PG&E, on Potrero
10 Combined Cycle, which PG&E was proposing at that
11 time. And combined cycle plants in Pittsburg,
12 repowerings at Morro Bay, and Moss Landing. Our
13 fuel cell power plant in San Ramon. We did the
14 permitting for our windmills. At that time PG&E
15 had wind properties up in the Cordelia area, and
16 my group developed that. Solar project that we
17 had in Cariso Plains.

18 Then I've also worked on projects
19 outside of the state.

20 Q Have you ever worked on a project before
21 as the -- basically the manager of the -- of the
22 -- basically, you're the Project Manager for the
23 Applicant --

24 A Right.

25 Q -- in this project. Have you ever done

1 that before for any other projects?

2 A Not exactly in this role.

3 Q Not exactly in this role. And I notice
4 in your -- in your resume here that your main --
5 your experience is mainly in the managerial, is
6 that true, or administrative role in the -- in
7 these projects that you've been involved in? Or
8 has it been more like a -- I mean, you have a
9 degree in -- you're a -- what is it, mechanical
10 engineer; right?

11 A That's right.

12 Q Do you, I mean, are you -- what I'm
13 getting to is in these jobs, did you act as a
14 mechanical engineer, did you, you know, apply your
15 mechanical engineering degree, or was it more of a
16 managerial administrative role? Is what I'm
17 trying to figure out.

18 A At different times, on different
19 projects, I've had different roles. It's ranged
20 all the way from doing detailed engineering,
21 design -- and design engineering detail, design
22 engineering.

23 Q Okay.

24 A To project management, to, you know,
25 everything in between.

1 Q Okay. Then my other questions are on
2 your -- your summary of the Project Description.
3 You mentioned several things that I'm a little
4 confused about, in regards to the Project
5 Description. Specifically, you were talking about
6 the use of recycled water, and I wasn't aware that
7 you had any service, water service for the
8 reclaimed water, or sewer service, in light of the
9 City of San Jose's unanimous denial of the
10 project.

11 Is that an accurate description, that
12 you're going to continue to pursue the reclaimed
13 water option, or are you going to consider the dry
14 -- dry cooling option as you -- as Calpine did in
15 Sutter, for example?

16 MR. HARRIS: I want to object to this
17 line of questioning as being more appropriate for
18 the Water testimony section. He's asking about
19 not -- he's not asking about Project Description
20 issues. He's asking about service issues.

21 MR. BOYD: All I'm asking if do you
22 believe the Project Description at this time is
23 complete and accurate?

24 HEARING OFFICER VALKOSKY: Okay. That's
25 a fair question.

1 THE WITNESS: Yes.

2 HEARING OFFICER VALKOSKY: Just answer
3 that question.

4 THE WITNESS: Yes.

5 BY MR. BOYD:

6 Q It is? And in light of the decision by
7 the city, you still believe that to be the case?
8 Because you have a lot of conditions in there that
9 depend on the city's approval, and those have
10 changed.

11 So are --

12 A We're not changing the Project
13 Description. We think that as we've described it,
14 that's -- that's the appropriate project for us to
15 go forward with.

16 Q Okay. You also mentioned that the --
17 you mentioned that you were -- Stan was asking you
18 about the portions in the county and the portions
19 in the city. Has the -- has the Applicant applied
20 for any entitlements from the county for this
21 project, that you're aware?

22 A No.

23 MR. BOYD: Okay. That ends all my
24 questioning. Thank you.

25 HEARING OFFICER VALKOSKY: Thank you,

1 Mr. Boyd.

2 Mr. Williams.

3 MR. WILLIAMS: Thank you, Mr. Valkosky.

4 The purpose of my questioning here is to
5 determine if the statutory requirements for a
6 plant application under the Warren-Alquist Act
7 have been met. So I --

8 HEARING OFFICER VALKOSKY: Mr. Williams,
9 what -- for my benefit, explain what you mean by
10 that, because --

11 MR. WILLIAMS: Yes.

12 HEARING OFFICER VALKOSKY: -- we don't
13 want to reinvent data adequacy at this point.

14 MR. WILLIAMS: I understand. Let me
15 direct your attention first to page 23 of the
16 Warren-Alquist Act, or to Section 1704. I have
17 one copy. I'm sure that Staff counsel could
18 assist you.

19 HEARING OFFICER VALKOSKY: Are you --
20 are you talking about the Commission regulations,
21 Section 1704?

22 MR. WILLIAMS: I'm talking about Rules
23 of Practice and Procedure, Power Plant Site
24 Certification Regulations.

25 HEARING OFFICER VALKOSKY: And 1704 is a

1 cite to the regulations --

2 MR. WILLIAMS: Yes.

3 HEARING OFFICER VALKOSKY: -- not to the
4 Warren-Alquist Act.

5 MR. WILLIAMS: Excuse me. Yes. Indeed,
6 it is the cite to the regulation.

7 So my -- my general questioning is this.

8 MR. HARRIS: I'm going to object on the
9 basis that I don't have that document in front of
10 me.

11 MR. WILLIAMS: I'd be happy to loan you
12 my copy.

13 MR. HARRIS: Please.

14 MR. WILLIAMS: The -- the concern I
15 have, Mr. Abreu, this is your first project. Did
16 you have any type of checklist, did you consult
17 any particular statutory requirements in coming up
18 with what you thought was the plant description?

19 PRESIDING MEMBER LAURIE: Hold -- Mr.
20 Abreu, hold on before you answer that question.

21 Mr. Valkosky, and I'll refer the
22 question to you and Mr. Williams. Are you
23 questioning the jurisdiction of this Committee to
24 hear this case at this time?

25 MR. WILLIAMS: No, I am not, sir. I --

1 I believe that the description of the plant is so
2 vague that if I were to hand you this report as a
3 -- a lending constructor, and ask you to go build
4 one, that you could not figure out what plant is
5 described in all of this documentation.

6 I also believe that nobody's bothered to
7 go through the -- the regulations here as a
8 checklist to determine if all the requirements for
9 an application have been met. And therefore, that
10 the application is vague and incomplete.

11 So I wanted to ask sufficient questions
12 to establish that.

13 HEARING OFFICER VALKOSKY: Okay. As to
14 the -- as to the second question, Section 1704
15 that Mr. Williams is referring to is entitled
16 Information Requirements for Notices and
17 Applications. This is typically the section of
18 the regulations and the appropriate appendix,
19 which has much more detailed --

20 MR. WILLIAMS: Which starts way back on
21 page 92, I think.

22 HEARING OFFICER VALKOSKY: Well, no, I
23 think it's actually -- Appendix B would be on page
24 113, I believe, of our regulations.

25 MR. WILLIAMS: Appendix B is on page 89

1 in my copy.

2 HEARING OFFICER VALKOSKY: Well, anyway,
3 the point being, my understanding is that these
4 are the criteria that the Commission Staff
5 assesses in determining whether or not an
6 Application for Certification is complete.
7 Commission Staff has 45 days, the Executive
8 Director makes a -- to perform that assessment.
9 The Executive Director then makes a determination
10 as to the completeness of an application. That
11 recommendation is considered by the full
12 Commission in their data adequacy hearing at that
13 time, at the Business Meeting. It always occurs
14 at a Business Meeting. The full Commission
15 decides whether or not to accept an application as
16 complete for processing.

17 Ms. Willis, does that accurately
18 summarize the process, both in general and that
19 which has occurred in this case?

20 MS. WILLIS: Yes, it does. And I -- I
21 do believe that we did attend two Business -- I
22 think it was two Business Meetings before the
23 application was determined to be data adequate.

24 HEARING OFFICER VALKOSKY: Okay.

25 PRESIDING MEMBER LAURIE: And, Mr.

1 Valkosky, I need to note for the record that I
2 think all the parties, including the Intervenors,
3 are aware that the Commission did act and did deem
4 the application complete.

5 MR. WILLIAMS: Now, is there an
6 appropriate -- I'm trying to raise -- call that
7 into question because I believe an objective
8 review of the material would show that the data
9 that's required --

10 HEARING OFFICER VALKOSKY: Mr. Williams
11 --

12 MR. WILLIAMS: -- in this --

13 HEARING OFFICER VALKOSKY: -- that horse
14 has been out of the barn for 18 months or so.

15 Mr. Harris, when was the AFC accepted?
16 I believe it was in June, but I --

17 MS. WILLIS: June --

18 MR. WILLIAMS: Of 1999. I realize that.

19 HEARING OFFICER VALKOSKY: June 23rd of
20 1999. Yeah. That determination was made then.

21 MR. WILLIAMS: Well, let me ask one more
22 question, if I may, just because I'm new to this
23 process.

24 As I understand it, there are some
25 requirements that are under the notice of intent,

1 that the notice of intent was waived after due --
2 after about a three month hearing early in the
3 process. Are the informational requirements in
4 the notice of intent still required to be met by
5 the Applicant during the course of the AFC, and
6 during the course of certification?

7 HEARING OFFICER VALKOSKY: Well, first
8 of -- Mr. Harris, refresh my recollection. Was
9 this case subject to an NOI exemption?

10 MR. HARRIS: I -- I'm going to have to
11 refresh my --

12 HEARING OFFICER VALKOSKY: Was there --
13 Paul, was there --

14 MR. RICHINS: Yes, I --

15 HEARING OFFICER VALKOSKY: Mr. Richins,
16 I'm sorry. Was this subject to an NOI exemption?

17 MR. RICHINS: I believe it was. I was
18 not the Project Manager at the time, but I -- I
19 believe it -- they requested, and were granted
20 NOI.

21 MR. HARRIS: I think it was a letter
22 filing. It was a fairly brief application.

23 MR. WILLIAMS: Now, when there is an
24 exemption, is the requirement for the information
25 that would've been in the notice of intent --

1 HEARING OFFICER VALKOSKY: No. No, an
2 exemption is, as the term implies, a decision by
3 the Commission that that project need not provide
4 nor go through the notice of intention process.

5 MR. WILLIAMS: And is there any reason
6 given?

7 HEARING OFFICER VALKOSKY: I -- not
8 having the document in front of me, I would, you
9 know, I would assume so. I would assume it met
10 the Commission's --

11 PRESIDING MEMBER LAURIE: Mr. Valkosky
12 --

13 HEARING OFFICER VALKOSKY: -- at that
14 time.

15 PRESIDING MEMBER LAURIE: -- Mr.
16 Williams, all that is a matter of public record.
17 The notice of exemption did come before the -- the
18 Commission. The Commission adopted the exemption.

19 MR. WILLIAMS: Okay. Now, but I -- I
20 understand you -- I am planning to pursue with Mr.
21 Richins the same sort of questions I am pursuing
22 with Mr. Abreu. That is, did Mr. Richins consult
23 any type of list, any type of statutory
24 requirement with respect to what should be in
25 plant description, when he accepted this material

1 from the Applicant.

2 HEARING OFFICER VALKOSKY: That, again,
3 the relevance, at least in my opinion, goes to the
4 data adequacy determination which was issued in
5 May or June of 1999.

6 MR. WILLIAMS: Well, there --

7 HEARING OFFICER VALKOSKY: That -- that
8 is not something that --

9 MR. WILLIAMS: -- there have been
10 numerous --

11 HEARING OFFICER VALKOSKY: -- he is
12 empowered to overrule.

13 MR. WILLIAMS: There have been numerous
14 and confusing changes. There are over 5,000 pages
15 of submittals on this project.

16 MR. HARRIS: Mr. Valkosky, can we be off
17 the record for a moment?

18 HEARING OFFICER VALKOSKY: Certainly.
19 Off the record.

20 (Off the record.)

21 HEARING OFFICER VALKOSKY: Okay. Mr.
22 Williams --

23 MR. WILLIAMS: If I may, sir, just --

24 HEARING OFFICER VALKOSKY: Yeah,
25 briefly, please.

1 MR. WILLIAMS: In -- in the nuclear
2 plant arena, it has been found necessary to have
3 two hearings, because at this stage of a project
4 the definition of the project is so vague that it
5 constitutes little more than a cartoon.

6 Now, I contend that even though that
7 this is a gas turbine plant, with not nearly the
8 same hazard as a nuclear plant, that because of
9 the numerous changes and ambiguity, the definition
10 of this plant is still incomplete, and a second
11 hearing describing in fact what is being built
12 should be held.

13 So that is an allegation that I was
14 going to attempt to establish by cross examination
15 of first the Applicant witness, and the Staff
16 witness.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. WILLIAMS: It's on the --

19 HEARING OFFICER VALKOSKY: You can --
20 you can ask Staff about the data adequacy
21 procedures. I'll allow you to do that. I don't
22 really think Mr. Abreu has any particularized
23 knowledge of what Staff has done, because that is
24 a Staff matter.

25 I will, however, inform you that the

1 Commission procedures do not provide for the type
2 of procedure that you allude to in nuclear plants.
3 That's not contained in the Warren-Alquist Act or
4 in the Public Resources Code. So therefore, you
5 know, the best advice I can give you, if that's
6 where you're going, it's irrelevant --

7 MR. WILLIAMS: Well, I --

8 HEARING OFFICER VALKOSKY: -- at this
9 time.

10 MR. WILLIAMS: If I may, sir, I'm just
11 trying to show that by approving at this time, it
12 amounts to signing essentially a blank check. The
13 Applicant is almost free to build whatever he
14 chooses to build.

15 HEARING OFFICER VALKOSKY: Then I would
16 suggest you may want to deal with Mr. Munro on
17 Compliance issues, because that's typically where
18 project changes come in.

19 MR. WILLIAMS: I -- I understand --

20 HEARING OFFICER VALKOSKY: There is --

21 MR. WILLIAMS: -- the Compliance
22 requirements.

23 HEARING OFFICER VALKOSKY: -- I mean,
24 it's -- it's very open that -- that the plant, as
25 required under the law, is currently in what's

1 referred to as a preliminary design stage. You
2 may wish to explore that further with the Facility
3 Design witnesses, who will be coming up later.

4 MR. WILLIAMS: Well, I intend to, and I
5 was trying to lay the groundwork by first asking
6 Mr. Abreu does he have any type of checklist. He
7 apparently does not. And I will submit --

8 MR. HARRIS: I need to object.

9 HEARING OFFICER VALKOSKY: You can --

10 MR. HARRIS: Mr. Williams is testifying
11 --

12 HEARING OFFICER VALKOSKY: Yes, I
13 understand --

14 MR. HARRIS: -- at this point, and --

15 HEARING OFFICER VALKOSKY: -- Mr.
16 Harris. Sustained.

17 You can question Mr. Abreu on the
18 materials that are within the scope of his
19 prepared testimony, as I indicated earlier.

20 MR. WILLIAMS: Thank you, sir.

21 HEARING OFFICER VALKOSKY: Okay.

22 Now, Mr. Boyd, it's -- Mr. Boyd's turn.

23 MR. BOYD: I have a question about the
24 process, not about -- any additional questions of
25 the --

1 HEARING OFFICER VALKOSKY: Okay. Real
2 quick.

3 MR. BOYD; I just want to object to
4 preventing in any way from him exercising his
5 rights as a member of the public from
6 participating meaningfully in this process.

7 HEARING OFFICER VALKOSKY: Okay.
8 Object.

9 MR. BOYD: And I believe any -- anything
10 you do to prevent any of us Intervenors or any
11 other member of the public from participating is
12 prejudicing us in this case.

13 HEARING OFFICER VALKOSKY: Objection
14 noted, Mr. Boyd. Thank you.

15 Continue, Mr. Williams.

16 MR. WILLIAMS: Well, thank you.

17 CROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q Mr. Abreu, in looking through pages 1
20 through 10 of this project overview, I don't find
21 anything about the plant thermal efficiency.
22 Could you direct me to where that issue is
23 discussed and dealt with?

24 A The details on the plant efficiency will
25 be covered by the later witness on Efficiency.

1 Q Thank you. That's under Plant Design
2 later today, or Facility Design?

3 A Actually, Efficiency.

4 HEARING OFFICER VALKOSKY: We have, if
5 you'll notice the agenda, there's a separate topic
6 entitled Efficiency.

7 MR. WILLIAMS: Thank you. Well, I've
8 said enough for now. I -- I appreciate your
9 indulgence, but I believe that we are dealing with
10 a very poorly defined project, that despite all
11 the --

12 MR. HARRIS: Mr. Williams is testifying
13 again.

14 HEARING OFFICER VALKOSKY: No. No, he's
15 not testifying, Mr. Harris. He's making a
16 statement. There's a difference.

17 MR. WILLIAMS: Thank you, Mr. Valkosky.

18 HEARING OFFICER VALKOSKY: Mr. Williams.

19 MR. WILLIAMS: I'm through at this time.

20 HEARING OFFICER VALKOSKY: Thank you.

21 MR. AJLOUNY: Mr. Valkosky, I didn't
22 originally ask to cross examine. This is Issa
23 Ajlouny.

24 By the way, do we need to say our name
25 before we start speaking?

1 HEARING OFFICER VALKOSKY: Please do.

2 MR. AJLOUNY: Okay.

3 HEARING OFFICER VALKOSKY: It keeps the
4 record.

5 MR. AJLOUNY: Okay. Issa Ajlouny. The
6 question is, do we need to -- do we need to have
7 to say that we wanted to cross examine in our
8 Prehearing Conference, November --

9 HEARING OFFICER VALKOSKY: November
10 30th. As a general rule, yes. However, I
11 indicated at that time that I would provide the
12 Intervenors a reasonable amount of latitude in
13 case something came up during cross examination.

14 MR. AJLOUNY: Great. I'd like to take
15 that opportunity.

16 HEARING OFFICER VALKOSKY: Okay.

17 CROSS EXAMINATION

18 BY MR. AJLOUNY:

19 Q Mr. Abreu, first of all, just some minor
20 things that I -- I'm finding a little difference
21 between the Staff's testimony and your -- what you
22 just testified. So, let me just find my spot
23 here.

24 You talked about the number of feet of
25 wire was 240 feet from the plant to the -- to the

1 lines where you need to be connected?

2 A That's right.

3 Q Okay. So, because I -- I do notice that
4 in the -- and I guess we'll ask Paul Richins. I
5 don't know how this works, but in the testimony,
6 or I don't know if it's Paul Richins' testimony,
7 but in the Project Description of Staff's FSA, it
8 talks about 200 feet. I mean, it's just a
9 difference of 40 feet, but I just want to make
10 sure for the record how many feet that really is.

11 Okay. One point, you stated that this
12 is a showcase for this area. I've heard that a
13 number of times over the last few months. Is that
14 -- why is it a showcase? I'm just -- why that's
15 even relevant for this power plant.

16 A I was just stating that's one of the
17 objectives of Calpine and Bechtel, to have a
18 project for this area that's not only needed and
19 important from an economic and reliability
20 perspective, but also one that people will be
21 proud of, just from seeing it and observing it.

22 Q So could some of those people being
23 proud of it and wanting to see it be like
24 stockholders, and help stock prices? I mean, what
25 -- I'm just trying to figure out why these

1 Commissioners here are stating, or sitting here
2 listening to the Applicant talk about a showcase.

3 HEARING OFFICER VALKOSKY: Issa -- Issa,
4 that's being argumentative. Ask -- ask something
5 that --

6 MR. AJLOUNY: No, there -- there's a
7 reason --

8 HEARING OFFICER VALKOSKY: -- that's
9 susceptible to a yes or no answer.

10 MR. AJLOUNY: -- I'm going -- I'm sorry.
11 Okay. Well, I guess, you know, because you can't
12 put words in a witness's mouth, I'm going
13 somewhere with this. But let me just be blunt.
14 I'm usually pretty good about being blunt. But I
15 was told to go around and ask questions --

16 PRESIDING MEMBER LAURIE: Just ask the
17 question.

18 BY MR. AJLOUNY:

19 Q Okay. Where's your -- where's your
20 headquarters based out of, Mr. Abreu?

21 A Calpine is headquartered in San Jose,
22 and Bechtel is headquartered in San Francisco.

23 Q Okay. Is there any plans to move their
24 headquarters?

25 MR. HARRIS: I'd object to this

1 questioning as being --

2 MR. AJLOUNY: Well, that's --

3 MR. HARRIS: -- outside the scope of the
4 direct testimony.

5 MR. AJLOUNY: Well --

6 HEARING OFFICER VALKOSKY: It's outside,
7 and it's --

8 MR. AJLOUNY: Okay. Well, this --

9 HEARING OFFICER VALKOSKY: -- it's
10 irrelevant.

11 MR. AJLOUNY: -- there's -- all right.

12 BY MR. AJLOUNY:

13 Q Are you familiar with the number of
14 homes east side of Monterey Highway?

15 MR. HARRIS: Again, I would object.
16 You're cross examining on testimony that's not
17 before the Committee.

18 MR. AJLOUNY: Well, the testimony that I
19 thought I just heard Mr. Abreu stated was that
20 this was a rural type area. I can't remember the
21 word, but it made it sound like there weren't any
22 homes next to it. And I just wanted to know if he
23 was aware of all the homes on the east side of
24 Monterey, next to the power plant, less than half
25 a mile away.

1 HEARING OFFICER VALKOSKY: Okay. Just,
2 Mr. Abreu, just, are you or are you not aware of
3 the fact that there are residential developments
4 in the plant vicinity?

5 THE WITNESS: The residential
6 developments would be not in the immediate plant
7 vicinity, but on the other side of Tulare Hill,
8 over half a mile away.

9 BY MR. AJLOUNY:

10 Q Okay. And I'll state my question again,
11 then. There are a number of homes that I
12 understand, and I have seen, and I have friends on
13 the east side --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. AJLOUNY: -- of Monterey Highway,
16 less than a half a mile. So I --

17 HEARING OFFICER VALKOSKY: Again, just
18 -- just questions the witness can answer yes or
19 no.

20 BY MR. AJLOUNY:

21 Q So you're not familiar with any homes on
22 the east side of Monterey Highway that are around
23 a half a mile away?

24 A We did do some work, and there are a few
25 homes, you know, to the east and to the south of

1 the project. But the closest home is the
2 farmhouse about 1200 feet to the south --

3 Q Yes, we --

4 A -- of the project.

5 Q -- we all know that. Okay.

6 A It's a farmhouse.

7 Q Okay. You mentioned that you feel that
8 maybe the City Council might change their minds on
9 how they feel about the power plant in San Jose
10 after this process goes through, in your
11 testimony. Did you feel the same way, that the
12 City Council was going to approve the very first
13 time they voted?

14 MR. HARRIS: Again, I need to object.
15 He's not asking about any of the testimony that's
16 before us.

17 HEARING OFFICER VALKOSKY: No, that's --
18 I'll have to sustain that.

19 MR. AJLOUNY: I guess that means I can't
20 ask a substitute --

21 HEARING OFFICER VALKOSKY: That's
22 correct.

23 BY MR. AJLOUNY:

24 Q Well, I -- I just heard testimony today
25 that -- you mentioned that a number of agencies

1 and groups are -- are backing Calpine's power
2 plant. And I just want to know, are any of those
3 agencies or -- like the American Lung Association,
4 you mentioned, you know, you mentioned a number of
5 them.

6 Are any of those agencies that you know
7 that are supporting Calpine and this project had
8 any funds or any financial benefit by Calpine?

9 A Not that I know of.

10 Q Is the Grange Hall supporting you in
11 this venture?

12 A The Grange Hall is a building.

13 Q Well, the Master of the Grange Hall? I
14 know that I -- I've heard it on the radio about
15 support by the Grange Hall, one of the --

16 HEARING OFFICER VALKOSKY: Okay. Issa,
17 you're testifying.

18 MR. AJLOUNY: Okay.

19 HEARING OFFICER VALKOSKY: You know,
20 just --

21 MR. AJLOUNY: Well, how --

22 HEARING OFFICER VALKOSKY: -- he's not
23 -- just ask, for example --

24 MR. AJLOUNY: Okay.

25 HEARING OFFICER VALKOSKY: -- are --

1 BY MR. AJLOUNY:

2 Q Did Grange Hall receive any money for a
3 new roof?

4 MR. HARRIS: I'm going to object on the
5 basis that the question deals with an agency
6 that's not on the list that's before us as part of
7 the testimony. And I also think it's wholly
8 irrelevant.

9 HEARING OFFICER VALKOSKY: Just --

10 MR. AJLOUNY: Okay. Did the --

11 HEARING OFFICER VALKOSKY: -- just let
12 the witness answer the question, Mr. Harris.

13 THE WITNESS: We have contributed to the
14 Grange Hall building for the roof.

15 BY MR. AJLOUNY:

16 Q Okay. Did --

17 A There's a lot of Staff hearings there,
18 so we wouldn't get rained on.

19 Q Okay. Did the American Lung Association
20 receive any donations or any benefit from Calpine
21 or Bechtel?

22 A No.

23 Q Not that you're aware of?

24 A No.

25 Q How about the Clean Air Coalition?

1 A The Clean Air Coalition is a support
2 group for the Metcalf Energy Center, and we have
3 provided funding in terms of mailings and things
4 like that, that that group does. We provide the
5 funding for that.

6 Q And in your testimony, did you state
7 anything regarding how -- the length of time for
8 this project description to be completed, once you
9 start?

10 A I don't think I did.

11 MR. AJLOUNY: Okay. I guess most of my
12 questions are for Paul Richins, because I will go
13 by the FSA.

14 HEARING OFFICER VALKOSKY: Okay. Thank
15 you.

16 MR. AJLOUNY: Thank you.

17 HEARING OFFICER VALKOSKY: Is there
18 anything else in cross examination?

19 Ms. Cord.

20 MS. CORD: Thank you, Stan.

21 CROSS EXAMINATION

22 BY MS. CORD:

23 Q Mr. Abreu, you just said that the
24 American Lung Association did not receive any
25 financial benefit from Calpine or Bechtel?

1 A Not that I know of.

2 Q Okay. Do you know who the president of
3 the Board of Directors of the local chapter of the
4 American Lung Association is?

5 A No.

6 Q Do you know Mr. Terry Trumble, who runs
7 the Trumble Law Firm?

8 A Yes.

9 Q Okay. And is the Trumble Law Firm
10 engaged by Calpine?

11 A No.

12 Q Have they been?

13 A Mr. Trumble is employed by another law
14 firm that we had used. I don't know of the
15 Trumble Law Firm.

16 Q Mr. Terry Trumble has received financial
17 compensation from Calpine?

18 A Yes.

19 Q And you didn't know he was the president
20 of the Board of Directors of the local chapter of
21 the American Lung Association?

22 MR. HARRIS: he answered that question.

23 I object on that basis.

24 HEARING OFFICER VALKOSKY: Asked and
25 answered.

1 MS. CORD: Thank you.

2 HEARING OFFICER VALKOSKY: Any other
3 thing -- anything else on cross?

4 MR. KRAEMER: Yes. Hello, I'm Oliver
5 Kraemer, and I would beg your indulgence.

6 I had a massive intra-cerebral
7 hemorrhage January 4th, 1998. I'm a former site
8 owner, and probably have not -- in fact, I have
9 great difficulty even finding this meeting today.
10 I get lost all the time.

11 But there are some irregularities with
12 what I understand to be the case, and I would like
13 to cross examine on those irregularities, please.

14 HEARING OFFICER VALKOSKY: Sir, are you
15 a party to this proceeding?

16 MR. KRAEMER: I was -- I don't know what
17 the definition of party to this, but I was a site
18 owner, and the testimony was that they have site
19 control. I see it differently.

20 HEARING OFFICER VALKOSKY: Okay. I tell
21 you what, I'll give you a chance to make your
22 statements in Public Comment, which will come up
23 in a couple of minutes. Okay?

24 MR. KRAEMER: All right. I think it
25 would have more impact if --

1 HEARING OFFICER VALKOSKY: Well --

2 MR. KRAEMER: -- Mr. Abreu, who
3 testified to certain things, would also take --
4 make those same admissions. So I would -- would
5 like either now, or in the future, be able to
6 cross examine him as to the veracity of those
7 things.

8 HEARING OFFICER VALKOSKY: Well, we're
9 going to --

10 MR. KRAEMER: Thank you very much.

11 HEARING OFFICER VALKOSKY: We're going
12 to give you a chance for Public Comment in just a
13 second.

14 MR. KRAEMER: I -- I object saying that
15 I, by cross examining, the testimony is much
16 stronger when it comes from the person who has
17 made the statement himself as admission. But I
18 bow to whatever you say.

19 HEARING OFFICER VALKOSKY: And again,
20 you know, you could ask one of the Intervenors to
21 ask your questions for you, too. That's another
22 possibility.

23 Mr. Boyd, you've had your cross
24 examination.

25 MR. BOYD: No, I understand that. I was

1 just asking a question about this gentleman here.

2 I --

3 HEARING OFFICER VALKOSKY: Mike --

4 (Parties speaking simultaneously.)

5 HEARING OFFICER VALKOSKY: -- think of a
6 court proceeding. Think of a court proceeding.

7 MR. BOYD: Point of order.

8 HEARING OFFICER VALKOSKY: Well, you --
9 you're out of order.

10 CHAIRMAN KEESE: This --

11 MR. BOYD: I'm raising a point of order.

12 CHAIRMAN KEESE: This is a -- this is a
13 formal proceeding now. We're not in chit-chat
14 back and forth.

15 MR. BOYD: Oh, I understand.

16 HEARING OFFICER VALKOSKY: He is not an
17 Intervenor. He's not here.

18 MR. BOYD: Mr. Valkosky, you're once
19 again preventing me from meaningfully
20 participating --

21 PRESIDING MEMBER LAURIE: Your objection
22 noted, Mr. Boyd. Move on, Mr. Valkosky.

23 HEARING OFFICER VALKOSKY: Okay. Any
24 redirect?

25 MR. GARBETT: Mr. Valkosky, I am an

1 Intervenor. I'm William Garbett, representing the
2 public.

3 I note that this hearing, on the pre-
4 briefing conference statements, was bifurcated
5 without any order being in place for that,
6 bifurcation of the pre-briefing conference
7 statements. And that I do not believe you're
8 quite ready.

9 I have a couple of questions for the
10 witness on cross examination.

11 HEARING OFFICER VALKOSKY: Okay. You
12 have two questions.

13 PRESIDING MEMBER LAURIE: State your
14 name for the record.

15 MR. GARBETT: Yes. William J. Garbett,
16 representing --

17 PRESIDING MEMBER LAURIE: And you're
18 representing yourself; is that correct?

19 MR. GARBETT: No, I am representing The
20 Public. It's an environmental organization.

21 PRESIDING MEMBER LAURIE: Let the record
22 reflect that he's representing himself. Proceed.

23 MR. GARBETT: The Public is --

24 PRESIDING MEMBER LAURIE: Spell your
25 last name for the record.

1 MR. GARBETT: William J. Garbett, G-a-r-
2 b-e-t-t.

3 PRESIDING MEMBER LAURIE: Ask your
4 question.

5 MR. GARBETT: I may have a long
6 question. The first one.

7 PRESIDING MEMBER LAURIE: You have two
8 questions, because you did not make the request at
9 the appropriate time. You have two questions.
10 Ask your first question.

11 CROSS EXAMINATION

12 BY MR. GARBETT:

13 Q Mr. Abreu, when Calpine had an
14 application that you submitted, and you had it
15 certified, you also modified this at a point in
16 time with a major modification. However, the
17 major modification was taking and disposing of the
18 original application pages in total, and replacing
19 it with other application papers after there was a
20 void made.

21 With these new pages, it constituted the
22 major portion of the document that's in evidence
23 here today. When are you going to get that
24 document certified?

25 PRESIDING MEMBER LAURIE: Let me object,

1 because I don't understand the question. Are you
2 talking about data adequacy?

3 MR. GARBETT: Well, I'm talking about
4 the form of the application to the Commission.
5 Where a -- a particular document you had approved
6 as to form and completeness at one point in your
7 hearings, you made a decision on --

8 HEARING OFFICER VALKOSKY: You're
9 referring to, Mr. Garbett, is what we've got
10 listed as Exhibit 2, which is the Errata Sheet for
11 Volume 1 of the AFC, which replaces the table of
12 contents and some other material? Is that what
13 you're talking about?

14 MR. GARBETT: There was a major
15 modification --

16 HEARING OFFICER VALKOSKY: We also have
17 three amendments --

18 MR. GARBETT: -- it was more -- yes.
19 This is --

20 HEARING OFFICER VALKOSKY: -- that the
21 witness has talked about, A, B and C.

22 MR. GARBETT: The first, A amendment,
23 was so massive as to replace the bulk of it. But,
24 in fact, the document with the amendments A, B and
25 C, and so forth, including the Errata, have not

1 been certified as to the application being
2 complete. Since there was parts of the
3 application disposed, it became an incomplete
4 application before you added the new material.
5 Point of law.

6 HEARING OFFICER VALKOSKY: You're free
7 to make that argument, sir. I'm not sure that's
8 something Mr. Abreu can answer, but if you'd like
9 --

10 THE WITNESS: Well, I'll just say that
11 we -- we filed supplements A, B and C, and that's
12 part of what we're presenting here as our
13 evidence, description of the project.

14 BY MR. GARBETT:

15 Q Mr. Abreu, were you coerced in your
16 application form by the Commission to use only
17 recycled water at the exclusion of dry cooling,
18 because of Commission pressure, especially in the
19 manner in which the FSA was written?

20 A No, there was no coercion.

21 PRESIDING MEMBER LAURIE: Thank you,
22 sir.

23 HEARING OFFICER VALKOSKY: Okay.

24 Recross, Mr. Harris?

25 (Laughter.)

1 HEARING OFFICER VALKOSKY: Redirect, I'm
2 sorry. Redirect.

3 MR. HARRIS: No, thank you. I
4 appreciate it.

5 HEARING OFFICER VALKOSKY: Okay.
6 Anything from Staff?

7 MS. WILLIS: No.

8 HEARING OFFICER VALKOSKY: Okay.
9 That'll conclude Applicant's presentation on
10 Project Description. Thank you, Mr. Abreu.
11 Staff's witness.

12 MS. WILLIS: Thank you. At this time
13 I'd like to call Paul Richins, Project Manager.

14 HEARING OFFICER VALKOSKY: Off the
15 record, please.

16 (Off the record.)

17 HEARING OFFICER VALKOSKY: Ms. Willis.

18 MS. WILLIS: Staff has called Paul
19 Richins, and he will need to be sworn.

20 HEARING OFFICER VALKOSKY: Swear the
21 witness, please.

22 (Thereupon Paul Richins was, by the
23 reporter, sworn to tell the truth,
24 the whole truth, and nothing but
25 the truth.)

1 TESTIMONY OF

2 PAUL RICHINS

3 called as a witness on behalf of Commission Staff,
4 having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WILLIS:

8 Q And could you please state your name for
9 the record?

10 A Paul Richins.

11 Q Mr. Richins, what is your job title?

12 A Project Manager at the Energy Commission
13 for the Metcalf Energy Center case.

14 Q And briefly, could you describe your
15 duties as it relates to this project?

16 A I was not the initial Project Manager
17 assigned to this case. I came on board around
18 November 15th, thereabouts. I've been Project
19 Manager since that time. November 15th, 1999.

20 My -- my duties are to see that the time
21 schedules are met; that the Staff completes their
22 assessments in a timely manner; hold and conduct
23 workshops to gather public input; and just ensure
24 that the work that the Energy Commission Staff is
25 responsible for is done in a timely manner.

1 Q Did you prepare the section of the Final
2 Staff Assessment entitled Project Description?

3 A Yes.

4 Q And that has been marked as -- has been
5 identified as Exhibit -- part of Exhibit 7.

6 Do you have any changes or corrections
7 to your section?

8 A I believe just one. The 200 feet on
9 page 17 should be 240 feet. And I believe the
10 document throughout the other sections includes
11 the 240 feet. This was not changed, as it should
12 have been.

13 Q Thank you. Did you just listen to the
14 Applicant's testimony on Project Description?

15 A Yes.

16 Q And did you review their written
17 testimony that was provided earlier?

18 A Yes.

19 Q Do you have anything to add or to change
20 to the Applicant's testimony at this time?

21 A No, I do not.

22 Q Was the project analyzed by the Staff
23 the same project as testified to just now by the
24 Applicant?

25 A Yes, it was.

1 Q You just testified that you became
2 Project Manager on November 15th, 1999. You were
3 not the Project Manager at the time that the
4 project was -- the application was determined to
5 be data adequate; is that correct?

6 A That's correct.

7 Q But is it your understanding that the
8 application was analyzed by Staff for data
9 adequacy, and then determined to be data adequate
10 by the full Commission?

11 A Yes.

12 Q Since you were not the Project Manager
13 at the time -- at that time, could you briefly
14 describe the process that Staff goes through to
15 analyze a project, or an application for a
16 project, to determine data adequacy?

17 A Yes. We have -- in our regulations, we
18 have a whole list of criteria that we review to
19 determine whether the application contains all the
20 material that are required for us to begin our
21 analysis. The Staff would normally go through
22 that checklist, identify the materials that were
23 there, and whether they were not, and then we
24 would, within 30 days of the application being
25 filed, make a recommendation to the Commissioners

1 at the Energy Commission.

2 Q Thank you. Do you have anything to add
3 to your testimony today?

4 A No, I do not.

5 MS. WILLIS: As a matter of procedure,
6 Mr. Valkosky, do you want us to enter each section
7 of the FSA separately?

8 HEARING OFFICER VALKOSKY: Yes.

9 MS. WILLIS: Okay. At this time we'd
10 like to enter the Project Description section of
11 the FSA as part of Exhibit 7.

12 HEARING OFFICER VALKOSKY: Okay. Is
13 there objection?

14 MR. WILLIAMS: Could you please cite the
15 pages?

16 HEARING OFFICER VALKOSKY: Fifteen
17 through 20.

18 MR. WILLIAMS: Thank you.

19 HEARING OFFICER VALKOSKY: No objection.
20 We'll admit that.

21 (Thereupon the Project Description
22 section of Exhibit 7 was received
23 into evidence.)

24 MS. WILLIS: And Mr. Richins is now
25 available for cross examination.

1 HEARING OFFICER VALKOSKY: Mr. Harris.

2 MR. HARRIS: I have no cross
3 examination. Thank you.

4 HEARING OFFICER VALKOSKY: Mr. Boyd.

5 MR. BOYD: There's one thing I wanted to
6 ask Paul, basically. You -- Mike Boyd.

7 CROSS EXAMINATION

8 BY MR. BOYD:

9 Q Paul, to your knowledge, is the current
10 description, Project Description, complete at this
11 time, and does it adequately reflect the
12 occurrences that have occurred in respect to
13 entitlements with the City of San Jose in regards
14 to water service, sewer service, and the LORS?

15 A The project that Staff analyzed is the
16 project that was described by Ken Abreu, and as
17 evidenced by the AFC and amendments A, B and C.

18 Q So the answer is that yes, this is the
19 -- the current Project Description as it is, and
20 there is no changes because of the city's
21 decision?

22 A I'm not -- I'm not aware of any changes.

23 MR. BOYD: Okay. That's all I have.
24 Thank you.

25 HEARING OFFICER VALKOSKY: Mr. Boyd.

1 Mr. Williams.

2 MR. WILLIAMS: Thank you, Mr. Valkosky.

3 Bob Williams here.

4 CROSS EXAMINATION

5 BY MR. WILLIAMS:

6 Q As a follow-up, are you aware of the
7 material that the City of San Jose has docketed by
8 Randolph Shipes, Mr. Richins?

9 A Yes.

10 Q Doesn't that indicate there are major
11 changes in the availability of services?

12 MR. HARRIS: I'd object on the -- if I
13 understand you, you're using a testimony for the
14 upcoming hearings, not testimony for this
15 particular section.

16 MR. WILLIAMS: Well, he -- he seems to
17 --

18 HEARING OFFICER VALKOSKY: What -- just
19 -- off the record again, please.

20 (Off the record.)

21 HEARING OFFICER VALKOSKY: Back on the
22 record.

23 MR. WILLIAMS: This is Robert Williams.

24 BY MR. WILLIAMS:

25 Q Mr. Richins, how many projects have you

1 managed at the CEC?

2 A I think you'll need to clarify your
3 question. I've -- you have to define project.

4 Q I'm -- I'm sorry. I'm trying to
5 determine -- let me just -- let me start with a
6 little different line of questioning.

7 HEARING OFFICER VALKOSKY: Let me help
8 you out, Mr. Williams.

9 Paul, how many AFC projects have you
10 been Project Manager for at the Commission?

11 THE WITNESS: Four.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. WILLIAMS: Okay. Thank you, sir.

14 BY MR. WILLIAMS:

15 Q Could you say which -- what those
16 projects were?

17 A Yes. Sutter, Delta, Moss Landing, and
18 Metcalf.

19 Q Thank you. Is there a -- what is your
20 responsibility as Project Manager regarding other
21 sections of the AFC, or the FSA, than those that
22 we're discussing? For example, the Facility
23 Design has a different member of the Staff who
24 will testify later today. As Project Manager, do
25 you have authority to review or change other

1 sections of the FSA?

2 MS. WILLIS: I'm going to object to --
3 your question states a fact that is erroneous. We
4 don't have a different member testifying. We do
5 have a member from the Staff that is a co-author
6 of the Facility Design testimony.

7 MR. WILLIAMS: Well, forgive me. I
8 wasn't trying to make an issue of that difference.
9 I'm trying to determine who has overall
10 responsibility for the quality of content of the
11 FSA.

12 BY MR. WILLIAMS:

13 Q Could you say who that is, Mr. Richins?

14 A I do not supervise anybody at the Energy
15 Commission. I'm responsible for seeing that time
16 -- timeframes are met, and that projects' products
17 are met and delivered as required. Each technical
18 individual has a supervisor or senior, or office
19 manager, that's responsible for reviewing their
20 work and providing that to me so that I can ensure
21 that it's done in a timely manner.

22 Q So -- just a follow-up on that. So who
23 has responsibility for the overall scope and
24 content of the FSA? Is it yourself, or just
25 committee of 30 individuals?

1 A Each section is each individual's
2 testimony, and they'll come here and raise their
3 right hand and testify and swear to the validity
4 of that particular section. So it's their
5 testimony with -- it's their testimony.

6 Q And who has responsibility if there are
7 inconsistencies between different sections? Just
8 hypothetically, at this time.

9 A Well, we hope that the senior that
10 reviews the work catches any inconsistencies that
11 might occur between, say, Water and Biology, for
12 instance. If there are other inconsistencies, it
13 goes through a management review of which I am one
14 of the persons responsible for the management
15 review, as -- as well as the attorneys, as well as
16 my supervisor, and as well as Bob Therkelsen.

17 HEARING OFFICER VALKOSKY: Mr. Williams,
18 if you could bring it back to Project Description,
19 which is what Mr. Richins was testifying on.

20 MR. WILLIAMS: Well, yes, sir. I'm
21 concerned about potential inconsistencies between
22 the overall Project Description and different
23 elements, and I thought with -- this'll be the
24 only time Mr. Richins --

25 HEARING OFFICER VALKOSKY: No. To the

1 extent you notice -- you note a project, what you
2 view as a project discrepancy between project --
3 between the disciplines, for example -- and
4 totally hypothetical. Say you notice a difference
5 in a statement in Transmission Line Safety and
6 Nuisance, and one on Waste Management.

7 MR. WILLIAMS: Yes.

8 HEARING OFFICER VALKOSKY: You can ask
9 those witnesses that. Why is this different from
10 what the other witness --

11 MR. WILLIAMS: And I was just trying to
12 see if there was any single point of contact.

13 Now, is that --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. WILLIAMS: -- single point of
16 contact yourself, sir?

17 HEARING OFFICER VALKOSKY: No, it --

18 MR. WILLIAMS: You --

19 HEARING OFFICER VALKOSKY: -- it most
20 assuredly is not.

21 (Laughter.)

22 MR. WILLIAMS: So, I was -- okay. Well,
23 just a couple more questions. It's the same ones
24 that I asked Mr. Abreu.

25 ///

1 BY MR. WILLIAMS:

2 Q Have you personally, or are you aware of
3 anyone at the Commission who has reviewed the
4 content of the FSA with respect to the statutory
5 requirements in the siting regulations?

6 A That was done many, many months ago, and
7 the technical staff assigned to the case at that
8 time did the data adequacy review and made the
9 recommendation.

10 Q So it's your position that it's covered
11 by data adequacy, even though there have been
12 thousands of pages of amendments since that time;
13 is that correct?

14 A Yes.

15 MR. WILLIAMS: Thank you.

16 HEARING OFFICER VALKOSKY: Okay. Thank
17 you, Mr. Williams.

18 Anything else for Mr. Richins? Okay.

19 Now, remember, reasonable latitude.

20 CROSS EXAMINATION

21 BY MR. AJLOUNY:

22 Q Mr. Richins, on page 15 of Project
23 Description it mentions, second paragraph, the
24 Applicant expects to employ a peak construction
25 workforce of about 400 over a two year period.

1 The next paragraph down mentions that commercial
2 operation expected to take 18 months.

3 I just wanted to understand what the
4 difference was, why -- is that just an oversight,
5 or just -- is there something I'm missing there?

6 A I believe in the AFC it talks about a
7 construction period of between 18 and 24 months,
8 and so that may be the reason for that.

9 Q So in your best knowledge of what you
10 know today, are you thinking it's still 18 to 24
11 months, or do you have a better estimate because
12 of things that have happened in the last year and
13 a half? I just --

14 A My understanding is that they would
15 propose to build the plant, once they begin
16 construction, from 18 to 24 months.

17 Q Okay. So if we take the low end of 18
18 months, the third paragraph, where the last
19 sentence says the Applicant anticipates commercial
20 operation by the summer of 2003, knowing of what
21 we know today approximately when the Commissioners
22 will say yes or no to this project, do you still
23 see that being by the summer of 2003?

24 A I don't know what the schedule is, and I
25 don't know what the Commissioners are planning for

1 a schedule, so I couldn't speculate.

2 Q Okay. I guess I -- I thought I
3 understood around May timeframe we might hear from
4 the Commissioners' ultimate vote, so I just
5 thought --

6 HEARING OFFICER VALKOSKY: Okay. Mr.
7 Richins, is it fair, based on your testimony, to
8 assume that the project would be in commercial
9 operation somewhere between 18 and 24 months after
10 the Commission issues a final decision on it, on
11 this case?

12 THE WITNESS: I would say 18 to 24
13 months after they begin construction.

14 HEARING OFFICER VALKOSKY: Okay.

15 BY MR. AJLOUNY:

16 Q Okay. So would it be fair to say that
17 it's a good chance that it won't be by the summer
18 of 2003?

19 A I couldn't speculate --

20 HEARING OFFICER VALKOSKY; Well, that's
21 -- we're getting speculative --

22 MR. AJLOUNY: Okay.

23 HEARING OFFICER VALKOSKY: -- because he
24 doesn't know when the decision's coming up.

25 MR. AJLOUNY: All right.

1 BY MR. AJLOUNY:

2 Q Mr. Richins, you -- did you write the
3 PSA also, Project Description?

4 A Yes.

5 Q Okay. I notice in the PSA it had 14
6 acres of the site; now it's 20. Did something
7 change from the PSA to the FSA that I'm maybe not
8 aware of?

9 A I don't know what you're aware of.

10 Q Well, okay.

11 HEARING OFFICER VALKOSKY: Okay. Just
12 -- the question is, is there any reason for the
13 difference between the 14 acre figure in the PSA
14 and the 20 acre in the FSA. Was something --

15 THE WITNESS: We -- we --

16 HEARING OFFICER VALKOSKY: -- was
17 something added, or was that just a mistake that
18 was clarified, or what was it?

19 THE WITNESS: We had many PSA workshops
20 on many subjects, and during the course of going
21 through different subject matter and the PSA
22 workshops, as well as talking with technical
23 staff, I think that the 20 acres is probably more
24 accurate than the 14 acres.

25 HEARING OFFICER VALKOSKY: Okay.

1 BY MR. AJLOUNY:

2 Q And can the CEC, from your knowledge,
3 can the CEC approve this project solely on the
4 basis of need? In other words, is the need, the
5 word "need", for this power plant relevant?

6 MS. WILLIS: I'm going to object to that
7 question. That's outside the scope of this
8 testimony on Project Description.

9 HEARING OFFICER VALKOSKY: Sustained.
10 That's also a legal point.

11 MR. AJLOUNY: Okay.

12 MR. BOYD: I object to not --

13 (Parties speaking simultaneously.)

14 HEARING OFFICER VALKOSKY: No, that's --

15 MR. AJLOUNY: -- having meaningful
16 testimony again.

17 HEARING OFFICER VALKOSKY: Objection
18 noted, Mr. Boyd.

19 MR. AJLOUNY: And I know I highlighted
20 something, and I can't remember why, so I guess
21 that's the end of my questioning.

22 HEARING OFFICER VALKOSKY: All right.

23 Thank you, Issa.

24 Mr. Scholz.

25 MR. KRAEMER: Mr. Chairman, I would like

1 to correct a statement I made earlier. Apparently
2 there is a question about the acreage. I may not
3 be a former property holder, I may be a present
4 property holder, based upon the conflict of the --
5 the different acreage, in that there was acreage
6 transferred over in that -- to what should be
7 under my control.

8 HEARING OFFICER VALKOSKY: Okay, sir.

9 We'll give you a chance to --

10 MR. KRAEMER: I would --

11 HEARING OFFICER VALKOSKY: -- to address
12 that in a second. Just -- just --

13 MR. KRAEMER: Oh, at the end of cross
14 examination, please.

15 HEARING OFFICER VALKOSKY: Mr. Scholz.

16 MR. SCHOLZ: My name is Scott Scholz.

17 CROSS EXAMINATION

18 BY MR. SCHOLZ:

19 Q Paul, or Mr. Richins, is it your
20 testimony that this project is state of the art,
21 showcase project?

22 A Show me on what page did I say that?

23 Q You didn't. I'm asking you, would it be
24 your testimony that this project is showcase state
25 of the art?

1 A I have no knowledge.

2 Q So it's not a fact in the case as
3 presented by you?

4 MS. WILLIS: I'm going to object.
5 That's not part of his testimony. That was Mr.
6 Abreu's testimony.

7 HEARING OFFICER VALKOSKY: Correct.
8 Sustained.

9 BY MR. SCHOLZ:

10 Q Could you elaborate how this project is
11 different than Sutter, Moss Landing, or Delta,
12 that would make it better than those projects?

13 MS. WILLIS: I'm going to object. Also,
14 that's outside the scope of his testimony in this
15 case.

16 HEARING OFFICER VALKOSKY: Let's -- let
17 me just get to this.

18 Mr. Richins, would you classify this
19 project as a state of the art power plant project?

20 (Inaudible asides.)

21 THE WITNESS: It's a little hard, I
22 guess, to define state of the art. But I would
23 say that the project is, based on the other
24 projects that I have seen at the Energy Commission
25 and have been Project Manager for, this project

1 is, if you take a look at water usage, air
2 quality, different environmental impacts
3 associated with it, this project is on a par with
4 any of those other projects that I have reviewed.

5 HEARING OFFICER VALKOSKY: Okay. So in
6 other words, it is at least comparable to other
7 projects with which you're familiar?

8 THE WITNESS: Yes, sir.

9 HEARING OFFICER VALKOSKY: Thank you.
10 Mr. Scholz.

11 MR. SCHOLZ: Thank you.

12 HEARING OFFICER VALKOSKY: Okay. Any
13 redirect?

14 MS. WILLIS: None.

15 HEARING OFFICER VALKOSKY: Recross?

16 MR. AJLOUNY: No, sir. Thank you.

17 HEARING OFFICER VALKOSKY: Mr. Garbett.

18 MR. GARBETT: One question.

19 CROSS EXAMINATION

20 BY MR. GARBETT:

21 Q Mr. Richins, one of the essential parts
22 of any project is the CEQA procedures, and that --
23 the CEQA procedures begin with a filing of a
24 notice of intent with the county clerk. Which
25 description, to your knowledge, was filed with the

1 county clerk to begin the process, the PSA, the
2 FSA, or it hasn't been done yet?

3 A I don't think what you just quoted is
4 appropriate, and the procedures that are followed
5 by the Energy Commission. The Energy Commission
6 has a process that has been approved by the
7 Resources Agency of the State of California, which
8 is a CEQA equivalent process, and therefore we do
9 not file with the city, county, or local
10 jurisdictions.

11 HEARING OFFICER VALKOSKY: Thank you.

12 Anything else for Mr. Richins? Thank
13 you, sir. You're excused.

14 Now I'll take public comment. Sir, if
15 you'll approach that microphone and identify
16 yourself, please.

17 MR. KRAEMER: Thank you.

18 HEARING OFFICER VALKOSKY: Over there.

19 The one that's up -- yeah, at the podium.

20 MR. KRAEMER: At the podium.

21 HEARING OFFICER VALKOSKY: Yeah. And if
22 you could spell your last name, please, so that we
23 get it right.

24 MR. KRAEMER: Yes. Oliver Kraemer, K-r-
25 a-e-m-e-r. May I begin my cross, please.

1 HEARING OFFICER VALKOSKY: Sir, why
2 don't you just tell us what your concerns are, and
3 then I'll see if we think it's appropriate to have
4 representatives from Staff or Applicant answer.

5 MR. KRAEMER: Yes. The County of Santa
6 Clara shows particular transfers of title over to
7 Calpine Summa Corporation. One of my questions
8 would be is that another -- the appropriate name
9 for what we're talking about here?

10 There is a transfer of ownership of
11 approximate 16 acres out of the control, as of
12 August, from Calpine Summa back to Tulare Hill
13 Corporation, and this may take -- and affect the
14 site that they have purported that they have
15 control over.

16 I wanted to confirm Calpine Summa
17 Corporation, the transfers of titles, and under
18 what authority that those transfers of titles were
19 conducted, and also under what title company was
20 used to accomplish that, please.

21 HEARING OFFICER VALKOSKY: Okay. Mr.
22 Abreu, can you shed any light on Mr. Kraemer's
23 concerns?

24 MR. ABREU: I really don't understand
25 the comments. I don't know if I can really shed

1 any light on it. Just what I told you earlier,
2 that we do have site control.

3 HEARING OFFICER VALKOSKY: You have site
4 control over the total amount of acreage that will
5 be potentially used for the project and its
6 facilities. Is that correct?

7 MR. ABREU: That's correct.

8 MR. KRAEMER: I would ask the total
9 amount that he is referring to. I'm familiar with
10 a 16 acre site and a 126 acre site.

11 HEARING OFFICER VALKOSKY: Mr. Abreu.

12 MR. ABREU: We have site control over
13 126 acres, which was formerly Tulare Hills
14 property. Ten acres of that would be developed
15 for the project site, and the other 116 is part of
16 our open space. And we have an option on another
17 ten acres in the Pasateno farm to the -- to the
18 south, and then we have another 15 acres of the
19 Bay Checker Spot Butterfly habitat on the Coyote
20 Ridge, and I believe we have ownership of that, as
21 well.

22 HEARING OFFICER VALKOSKY: Thank you.

23 Sir.

24 MR. KRAEMER: I do not -- I cannot
25 confirm that they have title to that 15 acres. If

1 that was formerly Tulare Hill had interest in that
2 15 acres.

3 HEARING OFFICER VALKOSKY: Sir, I think,
4 I mean, unless Mr. Abreu has got anything to --

5 MR. KRAEMER: I would -- I guess my
6 direct question would be that 15 acres he's
7 referring to, did Tulare Hills once have interest
8 in that property?

9 MR. ABREU: No. Not that I know of.

10 HEARING OFFICER VALKOSKY: Okay? Thank
11 you, sir.

12 Okay. The Public Adviser has indicated
13 a Gary Wesley wants to make some general --
14 general public comment about Mr. Abreu's
15 testimony, I believe.

16 MR. WESLEY: Yes.

17 HEARING OFFICER VALKOSKY: Sir, if you
18 could identify yourself, spell your last name for
19 the record, please.

20 MR. WESLEY: My name is Gary Wesley, W-
21 e-s-l-e-y. I'm a resident of Mountain View. And
22 my -- this is my general reaction to the testimony
23 of the first witness.

24 Down in Mountain View, we're interested
25 in low cost environmentally sound energy, which

1 leads me to these questions or general points.

2 First of all, why establish a power
3 plant that uses natural gas when it's not a
4 renewable resource, and when it's so expensive
5 currently.

6 Second, does it matter where such a
7 power plant is located? Wouldn't it be just as
8 useful in a place like Salinas.

9 And, finally, if this power plant is
10 approved and built, would Calpine or any successor
11 in interest be required to sell the energy to
12 those of us in Silicon Valley or in the State of
13 California, or could they sell it to the highest
14 bidder anywhere in the country?

15 Thank you very much.

16 HEARING OFFICER VALKOSKY: Thank you,
17 sir.

18 Is there anything else, any other
19 comments solely on Project Description?

20 Seeing none, we'll consider Project
21 Description submitted.

22 Okay. At this point we'll take a 15
23 minute recess. Reconvene at 4:15.

24 (Thereupon a recess was taken.)

25 HEARING OFFICER VALKOSKY: Okay. The

1 next topic is Compliance and General Conditions.

2 Mr. Harris.

3 PRESIDING MEMBER LAURIE: Mr. Valkosky,
4 why don't you take just a moment and discuss
5 briefly your understanding of what this testimony
6 encompasses, so all parties know what the
7 parameters of the testimony are going to be,
8 despite the fact that it should already be in
9 writing and noted.

10 HEARING OFFICER VALKOSKY: Okay. Well,
11 from Applicant, Commissioner Laurie, briefly, I
12 would just expect a -- an acknowledgment that
13 there's a general understanding and commitment to
14 honor the Commission's compliance program. And I
15 -- I should preface that actually with compliance
16 is essentially the Commission's term for enforcing
17 its conditions and handling any post-certification
18 changes which may be made to the project. That I
19 would expect that Mr. Munro would be prepared to
20 elaborate upon.

21 PRESIDING MEMBER LAURIE: So in the
22 following section we're going to get into a
23 discussion of compliance procedures, not a
24 discussion of the individual conditions to be
25 imposed on the project. Is that correct?

1 HEARING OFFICER VALKOSKY: That is
2 correct. The individual -- the discussion of the
3 individual conditions would, at least in my view,
4 be most appropriate under the topic in which they
5 appear.

6 PRESIDING MEMBER LAURIE: Thank you,
7 sir.

8 HEARING OFFICER VALKOSKY: Mr. Harris.

9 MR. HARRIS: Thank you. I believe the
10 witness has been sworn already, so I'll proceed.

11 HEARING OFFICER VALKOSKY: Correct.

12 TESTIMONY OF

13 KENNETH E. ABREU

14 was recalled as a witness on behalf of the
15 Applicant, and, having been previously duly sworn,
16 was examined and testified further, as follows:

17 DIRECT EXAMINATION

18 BY MR. HARRIS:

19 Q Would you state your name again for the
20 record, please?

21 A Kenneth E. Abreu.

22 Q And what subject matter testimony are
23 you here to sponsor today?

24 A General Conditions, Compliance
25 Monitoring, and Closure.

1 Q And specifically, which documents are
2 you sponsoring as part of your testimony?

3 A Section 4 of the AFC.

4 Q Okay. And the AFC is Exhibit 1.

5 Are there any changes or corrections to
6 your testimony?

7 A No.

8 Q And were the documents prepared either
9 by you or at your direction?

10 A By -- prepared at my direction.

11 Q And are the facts therein true, to the
12 best of your knowledge?

13 A Yes.

14 Q And are the opinions stated therein your
15 own?

16 A Yes.

17 Q And do you adopt this as your testimony
18 for this proceeding?

19 A Yes.

20 MR. ABREU: The witness has previously
21 reviewed his qualifications, so I won't ask you to
22 do that again.

23 BY MR. ABREU:

24 Q Have you had a chance to review the
25 General Conditions of Certification and General

1 Conditions of Closure located at pages 675 to 690
2 of the FSA?

3 A Yes.

4 Q And are those conditions, those General
5 Conditions acceptable to you?

6 A Yes.

7 MR. ABREU: At this point I would move
8 the document. I guess the document is part of the
9 AFC, so I don't need to move that.

10 I'll make the witness available for
11 cross examination at this point.

12 HEARING OFFICER VALKOSKY: Cross
13 examination, Staff?

14 MS. WILLIS: None.

15 HEARING OFFICER VALKOSKY: Okay. Mr.
16 Scholz, you indicated at the Prehearing Conference
17 you wish to cross examine on this topic?

18 MR. SCHOLZ: I believe my cross
19 examination would be of the Staff document.

20 HEARING OFFICER VALKOSKY: Okay. Mr.
21 Williams.

22 MR. WILLIAMS: The same. I confine my
23 remarks to the Staff.

24 HEARING OFFICER VALKOSKY: Okay. Mr.
25 Boyd.

1 MR. BOYD: Mike Boyd, CARE.

2 CROSS EXAMINATION

3 BY MR. BOYD:

4 Q Once again, back to your qualifications.
5 I note in here that I don't see any reference to
6 any project where you had any responsibility for
7 compliance or conditions of approval. Was there
8 anything besides a power plant, like any other
9 kind of development, where you had any experience
10 with compliance with conditions of approval?

11 A Many of the projects I worked on have
12 had to comply with permits and conditions.

13 Q But did you specifically have oversight
14 or -- or review in these conditions of compliance?

15 A At various jobs I have. You know, I was
16 at PG&E, I was Manager of Engineering Construction
17 for all of our power plant projects.

18 Q And --

19 A Which involved several projects, which
20 -- that established compliance conditions in that
21 case to the PUC.

22 Q Did that adopt some compliance
23 conditions on your project that you would have
24 some review over?

25 A Various agencies, depending on the

1 project. The air district, or water quality
2 control board, or, you know, the CPUC.

3 Q So in -- but in regards to the CEC
4 process, so to say, you have no prior experience
5 with the conditions of compliance? I know they
6 have several other projects.

7 A At -- at PG&E most of the projects we
8 had were geysers projects, and they went through
9 the CEC process and had Conditions of
10 Certification that we had to comply with.

11 Q That were small -- considered small
12 power plant projects, or over 50 megawatts? Did
13 you have any experience with anything over 50
14 megawatts?

15 A Sure. Our geothermal projects were over
16 50 megawatts.

17 Q Okay. Then the other question I had is
18 CARE filed a prehearing brief, and I was wondering
19 if you had the opportunity to look at our
20 prehearing brief.

21 A I did.

22 Q And were you aware of any of the other
23 projects where the Applicant may have had some
24 compliance issues of record?

25 MR. HARRIS: I'm going to object on the

1 basis that this is beyond the scope of his direct
2 testimony.

3 MR. BOYD: May I respond?

4 HEARING OFFICER VALKOSKY: I think -- I
5 think that's susceptible to a yes or no answer.

6 Mr. Abreu.

7 THE WITNESS: I'm not sure I understood
8 the question.

9 BY MR. BOYD:

10 Q Are you aware of any of the other
11 projects, in any other projects that the Applicant
12 has had before this Commission, are you aware of
13 any other issues of compliance with the Conditions
14 of Certification of any of those other projects?

15 A Only in a general manner.

16 Q Do you know the specific projects
17 involved?

18 A Yes.

19 Q Can you tell me which they were?

20 A Well, the projects that we've gotten,
21 our-- our Sutter project and our Los Medanos
22 project, and our Delta project.

23 Q So are you aware of any issues with
24 compliance, the Conditions of Certification in the
25 Delta project?

1 MR. HARRIS: Again, I would object on
2 the basis this is not part of his direct
3 testimony.

4 MR. BOYD: Stan, I'm basically trying to
5 establish their -- their record as would be with
6 complying with Conditions of Certification. Is
7 this not an appropriate forum for that?

8 MR. HARRIS: Not for cross.

9 (Laughter.)

10 HEARING OFFICER VALKOSKY: Thank you,
11 Mr. Harris, but I think I'll respond to that.

12 MR. HARRIS: I'm sorry. I'll drink
13 decaf next time, I swear.

14 (Laughter.)

15 MR. BOYD: I am drinking decaf.

16 HEARING OFFICER VALKOSKY: Okay. Mike,
17 I'm going to allow you a little bit of latitude on
18 this. I think most of the questions you have as
19 far as the remedies and the enforceability are
20 probably more --

21 MR. BOYD: Staff --

22 HEARING OFFICER VALKOSKY: -- more
23 relevantly directed to Staff. Yeah.

24 MR. BOYD: I'm just basically trying to
25 establish the witness's knowledge of other

1 projects, and their basic track record.

2 HEARING OFFICER VALKOSKY: Well --

3 MR. BOYD: And if he's aware of it.

4 HEARING OFFICER VALKOSKY: -- again,

5 let's -- let's leave track record. Just ask him

6 if there's been any compliance issues that he's

7 aware of, and go --

8 MR. BOYD: All right.

9 HEARING OFFICER VALKOSKY: -- okay?

10 MR. BOYD: Okay. Well, that's

11 sufficient now.

12 BY MR. BOYD:

13 Q But you -- you haven't been involved in

14 the -- any of these other siting, in -- in the

15 same role you are now. Have you been involved in

16 any of those other projects? The Sutter, Los

17 Medanos, or Delta?

18 A No.

19 MR. BOYD: No. Okay. So that's -- that

20 ends my questions. Thank you.

21 HEARING OFFICER VALKOSKY: Thank you,

22 Mr. Boyd.

23 Anything else for Mr. Abreu? Thank you,

24 sir.

25 Ms. Willis, Staff's witness on

1 Compliance?

2 MS. WILLIS: Staff would like to call
3 Steve Munro at this time.

4 HEARING OFFICER VALKOSKY: Would you
5 swear the witness, please.

6 (Thereupon Steve Munro was, by the
7 reporter, sworn to tell the truth,
8 the whole truth, and nothing but
9 the truth.)

10 TESTIMONY OF

11 STEVE MUNRO

12 called as a witness on behalf of the Commission
13 Staff, having first been duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. WILLIS:

17 Q Could you please state your name for the
18 record?

19 A Steve Munro.

20 Q And Mr. Munro, what is your job title at
21 the Energy Commission?

22 A Compliance Project Manager.

23 Q Did you prepare the testimony entitled
24 General Conditions, Compliance Monitoring, and
25 Closure Plan for the Final Staff Assessment that

1 has been marked Exhibit 7?

2 A Yes, I did.

3 Q Was a statement of your qualifications
4 included in the FSA?

5 A Yes, it was.

6 Q When did you start working for the
7 Energy Commission as a Compliance Project Manager?

8 A July of 1991.

9 Q How many projects have you served, how
10 many power plant projects have you served as
11 Compliance Project Manager?

12 A It would be around 15.

13 Q Were any of those projects projects
14 owned or operated by Calpine or Bechtel?

15 A Yes.

16 Q And which projects or project was that?

17 A The Sutter Power Project.

18 Q Do you have any changes or corrections
19 to your testimony today?

20 A No, I don't.

21 Q Do the opinions contained in your
22 testimony represent your best professional
23 judgment?

24 A Yes.

25 Q Could you please provide a brief summary

1 of the compliance process?

2 A Be happy to. The Commission decision
3 consists of three primary parts. One is the
4 Project Description, one is the specific
5 Conditions of Certification, written by the
6 technical Staff, and the other section is the one
7 I'm going to be talking about, the General
8 Conditions.

9 First start out with my
10 responsibilities. These include assuring design,
11 construction, operation and closure in compliance
12 with the Commission decision. Resolving
13 complaints. Processing amendments and project
14 changes. Maintaining compliance files. And I
15 might add at this point that we have a -- an 800
16 number that is available to the public during
17 project construction, in case there's any
18 complaints, questions, or any inquiries of any
19 nature.

20 We also -- I also conduct pre-
21 construction, pre-operational meetings to ensure
22 that all of the conditions that have a trigger
23 point of start of construction are completed, in
24 fact completed before construction is started.
25 And the same way with the project operation. All

1 of the conditions that are -- have a due date
2 prior to operation, that they're completed.

3 The compliance section also talks about
4 project owner responsibilities, and that is to
5 ensure that all conditions, requirements are
6 satisfied. Unconditional access to CEC Staff and
7 -- and all involved agencies to the site for any
8 matters relating to the Commission decision.
9 Submittal of required verifications. Monthly and
10 annual compliance reports. And completion of a
11 compliance matrix, including a pre-construction
12 compliance matrix that lists exclusively those
13 conditions that need to be completed prior to
14 construction, to ensure that they are.

15 The monthly construction report
16 summarizes current construction status, contains
17 documents that are required for that month,
18 updates the compliance matrix, lists deadlines not
19 met, and reason that they're not met, if there are
20 any. List of permits. And I might say that that
21 monthly construction report will be provided to
22 the nearest public library, nearest to the
23 facility.

24 The annual compliance report is similar.
25 It would contain an updated matrix, compliance

1 matrix, summary of project status, list of post-
2 certification changes approved, list of permits
3 and approvals obtained, summary of upcoming
4 compliance activities.

5 Now, in conducting compliance for a
6 project of this nature, we deal with delegate
7 agencies such as the city building office, and the
8 air quality management districts, and those kinds
9 of agencies who are delegated to perform
10 compliance functions on our behalf, who we work
11 with.

12 As far as enforcement, it's covered by
13 Public Resources Code Section 25534B and 25900,
14 which talks about revoking certification or
15 levying fines, or obtaining an injunction, in
16 cases of non-compliance. Serious non-compliance.

17 Any person -- now it's talking about the
18 complaint process. Any person may file a formal
19 or informal complaint. Most disputes are settled,
20 with informal complaints, to the satisfaction of
21 all parties. What happens is the CPM notifies the
22 project owner by phone or letter. A complaint is
23 not resolved immediately. The project owner is
24 required to investigate, provide preliminary
25 report within 48 hours, written report including

1 actions proposed and taken. I might note that
2 many complaints are resolved immediately. It
3 doesn't even get to that step.

4 The CPM would conduct a site visit.
5 Within 14 days of project owner's report, CPM or
6 complainant may request an informal meeting.
7 After that meeting, report is prepared. If
8 there's no resolution, then the formal complaint
9 process is available. And I might just note that
10 the formal complaint process is available at any
11 time. You don't have to go through the informal
12 process, although certainly the informal process
13 usually resolves the problems.

14 Post-certification changes. There are
15 certain changes that are made after the project is
16 approved. This typically is because of unforeseen
17 circumstances, or improved technology, where the
18 project is improved, that sort of thing. And in
19 order to do that, we have an amendment process
20 which is very similar to the process we're going
21 through right now, with public notification,
22 public input, and Staff analysis, and Commission
23 approval for any changes that are made.

24 We also have verification changes. If
25 you look at the decision you'll see that it's

1 divided into Condition and a Verification.
2 Verification changes can be made without
3 Commission approval, if they're minor changes.

4 There will be periodic community
5 meetings associated with this project. They're to
6 be held on a frequency as necessary, as agreed by
7 myself or whoever the CPM is, and the project
8 owner, with input from the public. And the
9 purpose is to inform the public of project status,
10 issues, plans, events, that sort of thing, and
11 provide the opportunity for public input.

12 For every project there's eventually a
13 closure process, when the project is at the end of
14 its useful life or some unforeseen event takes
15 place, the project closes. So that's the two
16 types of closure. A planned closure at the end of
17 the useful life, and an unplanned closure. An
18 unplanned closure can be of a temporary nature, or
19 it can turn into a permanent closure.

20 The -- for a planned closure, 12 months
21 prior to closure, a closure plan must be
22 submitted, and a process -- again, very much like
23 this one -- will be held to determine what
24 specific closure measures are necessary. And then
25 the Commission would approve the final closure

1 plan.

2 For a -- an unplanned closure, if it's
3 -- the closure lasts 12 months, then we would go
4 to the process for a planned closure, with a,
5 quote, closure plan, public workshops and
6 hearings, and final Commission approval of the
7 closure plan.

8 And I think that concludes my
9 description. Thank you.

10 Q Before I make you available for cross
11 examination, Mr. Munro --

12 A Yes.

13 Q -- I had a few questions.

14 A Sure.

15 Q There were several issues and concerns
16 brought up by the public during our workshops,
17 either to you or to other Staff members. So I'd
18 kind of like to address some of those concerns
19 with some questions.

20 During construction of a power plant
21 project, about how many times do you personally
22 visit the site?

23 A Generally once a month, or possibly more
24 often.

25 Q Now, is there any other Staff members or

1 delegates on site at other times other than the
2 times that you visit the plant?

3 A Yes, there are. The Staff members that
4 are involved with the particular Conditions of
5 Certification will often go to -- as part of the
6 verification process, to see that things are going
7 as they're supposed to. There's also the cultural
8 paleo specialist on site, biological and -- and
9 others. They all have the authority to stop
10 construction if there's, for example, a
11 significant cultural resource found or there's
12 found that a -- an endangered species is -- is
13 threatened.

14 Q Thank you. You also mentioned that a
15 building official or --

16 A Yes.

17 Q -- or another delegate --

18 A Yes. They would --

19 Q -- agency would be there?

20 A Yes. They would be there most likely on
21 a daily basis, doing inspections and reviewing
22 plans.

23 Q And is this person or persons hired by
24 the Applicant, or a part -- or hired by the Energy
25 Commission, as far as -- or responsible -- maybe I

1 should rephrase that.

2 Is that person responsible to the Energy
3 Commission Staff?

4 A That is a person that's responsible to
5 the Commission Staff. Yes.

6 Q You had mentioned community meetings.
7 Have you been in other -- involved in other
8 projects, power plant projects where there were --
9 there was a high public interest?

10 A Yes, I have.

11 Q And which project was that?

12 A That was the Crockett Cogeneration
13 Project.

14 Q Were you Compliance Project Manager on
15 that project?

16 A Yes, I was.

17 Q Were there public meetings held during
18 the -- throughout construction of that project?

19 A There were.

20 Q And about how often were those meetings
21 held?

22 A Initially there were monthly meetings,
23 which continued for about six months, until public
24 interest waned because things became pretty
25 routine. At that point, it was agreed to suspend

1 the meetings until such time as there appeared to
2 be a need to resume them. And about six months
3 later, during the start-up process, when certain
4 things started occurring that were of interest to
5 the public, then the meetings were convened, until
6 the end of construction.

7 Q And generally, who organized these
8 meetings?

9 A It was organized by the project owner
10 in cooperation with me, and notice of the meetings
11 was published in the local newspaper.

12 Q Were you in attendance at all -- all of
13 the meetings?

14 A Yes, I was.

15 Q And who was responsible for the agenda?

16 A The project owner was responsible for
17 the agenda, with my input.

18 Q Were public members able to put an item
19 on the agenda, as well?

20 A It was completely unrestricted. There,
21 you know, once we went through the formal agenda
22 items, anybody could raise anything they wanted.

23 Q And generally, about what time of the
24 day were they held? Were they held during the
25 daytime, or at night?

1 A They were held in the evening.

2 Q And in your professional opinion, is
3 this, the Crockett public meeting process a good
4 model that you would recommend for this project?

5 A I would say it worked -- it worked well
6 in Crockett, and in general terms I think it
7 probably would work also for this project.

8 Q And another area of concern was the
9 issuance of reports, compliance reports. You
10 mentioned how -- how often compliance reports are
11 filed during construction.

12 A Correct.

13 Q And how often is that, again?

14 A There's the monthly compliance report.

15 Q And those reports are filed with the
16 local library?

17 A They're filed with -- with me, and a
18 copy will be simultaneously provided to a local
19 library.

20 Q And --

21 A The nearest local library.

22 Q How often are compliance reports filed
23 during operation?

24 A During operation, that would be
25 annually.

1 Q Are there other reports that are filed?

2 A There's a quarterly air quality report.

3 Q Okay. Thank you.

4 If the Applicant provides you with these
5 monthly reports or annual reports electronically,
6 are you willing to either post them on the Energy
7 Commission Web site, or provide them for -- to a
8 community Web site for posting?

9 A That would -- that would be fine. Yes.

10 Q Are you the Compliance Manager on the
11 Sutter Project?

12 A Yes, I am.

13 Q Is that also owned by Calpine?

14 A Yes, it is.

15 Q Are you aware of any complaints
16 regarding trucks in this project?

17 A There have been complaints related to
18 trucks, yes.

19 Q Do you know how many complaints there
20 have been?

21 A Related to -- there have been about 14
22 or 15 complaints related to trucks.

23 Q And that equal -- if you can tell me how
24 many trucks were in violation in this --

25 A With regard to those specific

1 complaints, that represented about 35 trucks that
2 were using the wrong route.

3 Q And 35 trucks out of how many trucks
4 that would travel daily? Or in total.

5 A Well, just -- I can tell you the total
6 from the start of the project construction is
7 11,150.

8 Q And do you have about a percentage -- do
9 you know the percentage of compliance this would
10 be?

11 A Well, that would work out to a 99.7
12 percent compliance.

13 Q The trucks that were in violation of the
14 conditions, what types of trucks were they?

15 A This would be dump trucks, equipment
16 trucks, that -- that nature.

17 Q So the complaints were reported then
18 during construction, not operation?

19 A Right, because the project is still
20 under construction.

21 Q And can -- do you know, or could you
22 please list some of the corrective actions that
23 were taken by Calpine once the complaints were --

24 A Oh, sure.

25 Q -- issued?

1 A I want to clarify that the only specific
2 action that was required was that they put the
3 requirement of the truck route into all contracts,
4 being sure that all trucking contracts had that
5 language. And that was done from the beginning.

6 However, it -- it turned out to be more
7 difficult than that to control individual truck
8 drivers' decisions about what route they were
9 going to take to the project, particularly when a
10 particular route was closer than another route.
11 So once it was established that the -- the
12 contract language was not sufficient, the --
13 Calpine, in cooperation with me, began
14 implementing additional measures until the problem
15 was resolved.

16 Q And what types of measures were those?

17 A They began to emphasize more -- every
18 time they would call for a delivery, they would
19 note this requirement. If drivers were found
20 violating the requirement, they would ask that
21 steps be taken to discipline the drivers, or other
22 -- other measures that were appropriate. If a
23 particular trucking company had repeated
24 violations, that trucking company was fired from
25 the job.

1 At a couple of times, when the truck
2 traffic was particularly heavy, they posted
3 security people at the key intersections to make
4 sure that the trucks were in compliance. They
5 moved their guard gate -- this was early on --
6 they moved their guard gate so the guard could see
7 what direction the trucks were coming from, and if
8 they were coming from the south they would be
9 known to be in violation, and that truck would be
10 turned around with its load, and sent back.

11 These measures cumulatively had an
12 effect of reducing the problem to a very minimum.

13 Q Were any of the trucks that you
14 described carrying ammonia or any other hazardous
15 substance?

16 A Not -- not to my knowledge.

17 Q Are you aware of any violations of
18 Conditions of Certification in the Sutter project
19 that involved the transportation of hazardous
20 substance?

21 A No.

22 Q Did you receive any complaints during
23 construction at all, in Sutter, other than the
24 trucks?

25 A Other than truck related complaints,

1 there was one other complaint about noise from the
2 project, when they implemented a second shift.
3 This was in September of this year.

4 Q And how did you handle that complaint?

5 A I brought it immediately to the
6 attention of the Calpine project manager on site,
7 and informed him that the problem needed to be
8 resolved immediately, because it was happening
9 late at night and people were losing sleep over
10 it. The person that called, this was on a Friday,
11 so I provided her a number that she could contact
12 me any time this noise reoccurred. I informed the
13 project manager that if I was indeed contacted, he
14 was to be available and to immediately -- and be
15 prepared to immediately take steps to stop it.

16 Q And your testimony is that your
17 availability would be during the weekend or at
18 night time hours, as well?

19 A If -- if necessary. Yes.

20 MS. WILLIS: That is all the questions I
21 have.

22 HEARING OFFICER VALKOSKY: Would you
23 like to move that portion of Exhibit 7?

24 MS. WILLIS: I -- I would like to move
25 the Compliance and General Conditions section of

1 the FSA into the record. It starts at 677.

2 HEARING OFFICER VALKOSKY: At 677, I
3 have 677 to 693.

4 MR. WILLIAMS: There's -- 693 is
5 actually the start of Alternative --

6 HEARING OFFICER VALKOSKY: That's
7 correct. I stand corrected, Mr. Williams. Thank
8 you. It's 677 to 692.

9 Is there objection?

10 MR. BOYD: I have a question.

11 HEARING OFFICER VALKOSKY: Mr. Boyd.

12 MR. BOYD: By making this -- accepting
13 this into evidence, does that mean that you --
14 you, or the Commission Staff, has accepted the
15 conditions, the compliance conditions as are
16 currently proposed? Or is that locking it in, is
17 what I'm saying, before the --

18 HEARING OFFICER VALKOSKY: No. What it
19 means is that that was the testimony offered by
20 Staff. It was competent testimony, and it was
21 received. It's one of the --

22 MR. BOYD: That's all.

23 HEARING OFFICER VALKOSKY: -- things
24 that'll be considered.

25 MR. BOYD: Okay.

1 HEARING OFFICER VALKOSKY: Yeah, that's
2 what it means.

3 With that clarification, I take it there
4 is no objection? We'll admit the aforementioned
5 pages of the FSA.

6 (Thereupon the General Conditions,
7 Compliance Monitoring and Closure
8 Plan portions of Exhibit 7 were
9 received into evidence.)

10 HEARING OFFICER VALKOSKY: Mr. Munro,
11 before we turn to cross. Are you familiar with
12 the Los Medanos project?

13 THE WITNESS: I am -- I have a passing
14 familiarity with it.

15 HEARING OFFICER VALKOSKY: Okay. You
16 are not the project --

17 THE WITNESS: I'm not the project
18 manager.

19 HEARING OFFICER VALKOSKY: -- on the Los
20 Medanos project. Okay.

21 Could you summarize the compliance
22 procedures and the remedies available in case a
23 Condition of Certification is violated?

24 THE WITNESS: If a condition -- if a
25 condition is violated, the Compliance Project

1 Manager would immediately investigate it and ask
2 the Project Manager to -- the project team to
3 investigate it, if that was appropriate.

4 The investigation would consist of the
5 severity of the violation, whether -- whether it
6 was a willful violation, whether it was a
7 continuing violation, whether it was causing harm
8 to the environment or to public health and safety.
9 And then the response would be based on a
10 combination of those factors, which could be --
11 range from resolving the problem, to imposing a
12 fine, to revoking the license, to obtaining an
13 injunction in serious cases.

14 HEARING OFFICER VALKOSKY: And who makes
15 that decision as to what the appropriate response
16 is?

17 THE WITNESS: The Compliance Project
18 Manager would make the decision on the more --
19 less serious violations, and then as they became
20 more serious it would be made with the --
21 consultation with division staff and with the
22 Executive Director, and also the Siting Committee.

23 HEARING OFFICER VALKOSKY: Okay. Thank
24 you.

25 THE WITNESS: Yes.

1 HEARING OFFICER VALKOSKY: What process
2 is followed on the Staff part in deciding whether
3 an amendment to a project is appropriate? What
4 criteria do you look at?

5 THE WITNESS: An amendment is necessary
6 if there is a significant change to the project
7 description, or if there is any change to the
8 Conditions of Certification.

9 HEARING OFFICER VALKOSKY: Okay. Now,
10 could you explain the different types of
11 amendments? I mean, there are -- there are
12 amendments which Staff will basically propose on
13 its own, and there are amendments which require
14 Committee hearings.

15 THE WITNESS: Correct. There are
16 amendments that are requested by the project
17 owners. That's a typical amendment, where they
18 would want to make a change. They would submit a
19 petition. Staff would do an analysis, you know,
20 they would have to provide a complete description
21 and answer any questions from Staff. Then Staff
22 would make a recommendation to the Commission as
23 to whether that amendment be approved or not.

24 HEARING OFFICER VALKOSKY: Right. And
25 that associated paperwork is available to the

1 public, is that --

2 THE WITNESS: Yes, it is.

3 HEARING OFFICER VALKOSKY: -- not
4 correct?

5 THE WITNESS: Yes. And the public is
6 notified anytime that happens.

7 HEARING OFFICER VALKOSKY: Right. And
8 the Commission, even on a non-controversial
9 amendment --

10 THE WITNESS: Right.

11 HEARING OFFICER VALKOSKY: -- must
12 decide whether or not to grant that amendment --

13 THE WITNESS: That's correct.

14 HEARING OFFICER VALKOSKY: -- at a
15 public hearing.

16 THE WITNESS: That's correct.

17 HEARING OFFICER VALKOSKY: Is that
18 correct? Okay.

19 Now, just, could you give me the
20 criteria on a controversial amendment?

21 THE WITNESS: What would determine
22 whether a Committee was assigned, for example?
23 That would be, say, one or a combination of
24 factors such as the seriousness of the violation,
25 whether the -- you know, whether it was

1 intentional or whether the project owner should've
2 known to inform me, or the Compliance Project
3 Manager.

4 HEARING OFFICER VALKOSKY: Okay. How
5 would you -- how would you define seriousness of
6 the violation?

7 THE WITNESS: Seriousness would be
8 whether it poses a threat to public health and
9 safety, or a threat to the environment.

10 HEARING OFFICER VALKOSKY: How about if
11 it's clearly in direct violation of a Condition of
12 Certification contained in the decision? Would
13 that necessarily be serious, or would it --

14 THE WITNESS: No, it wouldn't
15 necessarily be serious, because there's all --
16 there are different types of Conditions of
17 Certification. Different levels of consequences.

18 HEARING OFFICER VALKOSKY: Okay. So
19 Staff would do an evaluation in the context of all
20 the circumstances.

21 THE WITNESS: Right. That's right.

22 HEARING OFFICER VALKOSKY: Okay. Thank
23 you.

24 Cross examination, Mr. Harris?

25 MR. HARRIS: Just briefly, a couple

1 things.

2 CROSS EXAMINATION

3 BY MR. HARRIS:

4 Q You mentioned the Sutter Power Plant
5 project.

6 A Yes.

7 Q That project was developed by Calpine
8 alone, and not Calpine/Bechtel. Is that correct?

9 A I know Calpine is the construction
10 contractor, but yes, I believe it was developed by
11 Calpine alone. That's my understanding.

12 Q Right. The licensee is Calpine.

13 A Yes.

14 Q And with the Los Medanos project, the
15 same situation. The licensee is Calpine.

16 A Yes.

17 Q And with the Delta Energy Center, the
18 licensee is Calpine and Bechtel. Is that
19 correct?

20 A I -- again, I'm not as familiar with the
21 other projects.

22 Q Okay.

23 A So.

24 MR. HARRIS: That's all I have. Thank
25 you.

1 HEARING OFFICER VALKOSKY: Mr. Scholz.

2 CROSS EXAMINATION

3 BY MR. SCHOLZ:

4 Q Mr. Munro, have you been designated as
5 the Compliance Manager for the proposed Metcalf
6 Energy Center?

7 A Yes, I have.

8 Q What other projects are you Compliance
9 Manager for?

10 A Let's see. The Sutter Power project,
11 the SEGS 8 Project, the SEGS 9 project, the SEGS 3
12 through 7 Project, the High Desert project, the El
13 Centro project, and the Watson Cogeneration
14 project.

15 Q Can you repeat the last two?

16 A El Centro, which -- and Watson
17 Cogeneration.

18 Q Is it your responsibility to make sure
19 all Conditions of Certification for this proposed
20 power plant project are followed and verified?

21 A Yes.

22 Q Visual Resource Condition of
23 Certification 10, on page 386, with the
24 verification discussion on page 387 of the Final
25 Staff Assessment --

1 A Uh-huh.

2 Q -- are you familiar with that one?

3 That's one --

4 A I'd have to --

5 Q -- one of the more controversial ones in
6 the project.

7 MS. WILLIS: I have --

8 THE WITNESS: I'd have to refer to it.

9 BY MR. SCHOLZ:

10 Q I'm just picking it out as an example.

11 How are you going to verify that the -- that the
12 project is not producing any visual plume?

13 Because the discussion in that area doesn't say
14 how you're going to verify it.

15 MS. WILLIS: I'm going to object to that
16 question on the grounds that he's not the Visual
17 expert. He's the Compliance Manager in this.

18 Now, if --

19 MR. SCHOLZ: Right.

20 MS. WILLIS: -- as --

21 MR. SCHOLZ: I'm asking a Compliance
22 question.

23 HEARING OFFICER VALKOSKY: Yes, and
24 that's --

25 MR. SCHOLZ: For verification.

1 HEARING OFFICER VALKOSKY: -- that's
2 what it seems to me. He's looking for the method
3 which Mr. Munro would use to verify the absence of
4 a plume. As -- as I understand it. He can talk
5 about that without getting into the --

6 MS. WILLIS: The specific --

7 HEARING OFFICER VALKOSKY: -- the
8 specifics of that condition, which we have not
9 addressed.

10 What approach would Staff use, I think
11 is the question.

12 THE WITNESS: Would you -- I don't
13 recall that condition offhand, off the top of my
14 head. But --

15 HEARING OFFICER VALKOSKY: Just -- just
16 talk about it in general. Would something like a
17 condition that requires you to verify the absence
18 of a plume be done by inspection, be in reaction
19 to a community complaint, that type of thing.

20 THE WITNESS: It could be done by
21 inspection. It could be done through a community
22 complaint. As in the Crockett Cogeneration
23 Project, there is actually a camera that's trained
24 on the -- the stack.

25 HEARING OFFICER VALKOSKY: Okay. And

1 who monitors the camera?

2 THE WITNESS: The staff at Crockett, at
3 the project. The project staff.

4 HEARING OFFICER VALKOSKY: Okay. Who
5 notifies the Compliance Manager that there has
6 been a violation? If, in fact, there has been.

7 THE WITNESS: It would be the project
8 staff.

9 HEARING OFFICER VALKOSKY: Okay.

10 THE WITNESS: Or members of the -- any
11 member of the project that saw a plume. And a
12 member of the public.

13 HEARING OFFICER VALKOSKY: Any member of
14 the public. So that members of the public are
15 free to --

16 THE WITNESS: Encouraged --

17 HEARING OFFICER VALKOSKY: -- basically
18 call in --

19 THE WITNESS: Encouraged to.

20 HEARING OFFICER VALKOSKY: -- encouraged
21 to call in to the Compliance Project Manager.

22 THE WITNESS: Yes. Absolutely.

23 HEARING OFFICER VALKOSKY: Mr. Scholz.

24 BY MR. SCHOLZ:

25 Q Would you consider a automated plume

1 camera for this project? Taking periodic
2 pictures, since it's not supposed to show a
3 picture --

4 HEARING OFFICER VALKOSKY: Okay. Mr.
5 Scholz, we're -- this is that fine line.

6 MR. SCHOLZ: Well, you -- you put it out
7 there, so --

8 HEARING OFFICER VALKOSKY: Right, but --
9 (Laughter.)

10 HEARING OFFICER VALKOSKY: I know, and
11 that's where it's a fine line. We're getting --
12 we're getting to the particulars of a condition,
13 okay. Now, that's -- that's fair game, when we
14 get to Visual. There is no doubt about it. You
15 know, if you think that's what should be required,
16 I encourage you to make your case then.

17 But this --

18 MR. SCHOLZ: But Mr. Munro won't be
19 here; right?

20 HEARING OFFICER VALKOSKY: No, he won't.

21 MS. CORD: Then how do we ask questions
22 about compliance, if he's not here --

23 HEARING OFFICER VALKOSKY: Well, the way
24 you ask questions about compliance, if there is
25 something in a verification which doesn't make

1 sense to you, or seems unenforceable, you ask the
2 witness that's proposing that condition why that's
3 there. You know. I think Mr. Munro right now can
4 just give you the general approach that they would
5 use.

6 I'm sorry. Mr. Richins.

7 MR. RICHINS: Maybe I can provide a
8 little clarification. The technical person that
9 wrote the particular section, say, in this case,
10 Visual, is responsible for the Conditions of
11 Certification. They're the ones that wrote that,
12 and are recommending those specific details
13 contained in the Condition of Certification.

14 Steve Munro reviewed them, but he was
15 not the author for those conditions. It's the
16 technical staff.

17 THE WITNESS: And I might just --

18 MS. CORD: Does that mean that the
19 Visual -- the person who wrote the Visual
20 supervises the compliance staff?

21 HEARING OFFICER VALKOSKY: No, they're
22 separate units.

23 THE WITNESS: Yeah, let me just clarify
24 a point. All of the people that were involved in
25 drafting the conditions and doing the analysis

1 will remain with the project throughout. Or their
2 replacements. And they will continuously monitor
3 the conditions that they drafted.

4 Now, I just coordinate things and make
5 sure that -- that conditions are completed when
6 they're supposed to be, and that sort of thing.
7 And I'm a central contact point. So they will --
8 they will be with the project through enforcement.

9 BY MR. SCHOLZ:

10 Q So it wouldn't be appropriate to get
11 into any other discussion on something like this
12 on how you are going to verify that this -- these
13 conditions are met, specifically. We're just
14 talking --

15 A It --

16 Q -- in generalities here.

17 A It's not my specific decision as to how
18 the conditions are going to be verified, so.

19 Q Let's go into compliance. How do you
20 know the project is in compliance?

21 A We have a tracking system that we used -
22 - that we use, and that tells us when various
23 items of compliance are due, and what submittals
24 are necessary, and we sort of send them to
25 technical staff when they come in and check them

1 off when they're completed. And that pretty much
2 -- that's pretty much the system that's used.

3 Q Do you receive reports that tell you
4 whether or not the project's in compliance?

5 A Well, sure. The monthly compliance
6 report during construction would be the principal
7 report.

8 Q But on any given day you may not know
9 whether the project's in compliance?

10 A That's true. However, as we say, as I
11 said before, there are biological monitors, paleo
12 monitors, CBO, you know, there are various people
13 on site, so it's unlikely, but, you know, it's
14 unlikely that a serious non-compliance would
15 continue for any length of time.

16 Q Are you thinking that there's also other
17 types of monitors available to know whether or not
18 they're in compliance? Such as the public.

19 A Yes, absolutely.

20 Q Some of the questions I wanted to ask
21 were asked directly by Ms. Willis. Do you recall
22 coming to the PSA workshops at the Coyote Grange
23 Hall?

24 A Yes.

25 Q Did you take notes during your topic?

1 A Yes.

2 Q Or discussion. Do you recall a lengthy
3 discussion where an Intervenor asked that a
4 designated community representative be provided
5 with the compliance reports?

6 A I think I recall a discussion in which
7 that was discussed, with other alternatives.

8 Q Do you recall the discussion asking to
9 get the data directly from the Applicant in order
10 to determine if the project is in compliance once
11 it's operating?

12 A Well, I do get the information directly
13 from the Applicant. And the information will be
14 provided to the nearest public library, so I think
15 that's in response to that comment.

16 Q For the most part, would it be fair to
17 say that you wouldn't know there was a problem at
18 the plant for perhaps a month?

19 A No, that's generally not the case,
20 because although we -- we don't -- you know, we
21 don't rely on the public to enforce our
22 conditions, they're a very important aspect, and
23 we're -- we, as I say, we encourage them to let us
24 know if they see anything at all. And that --

25 Q The public --

1 A -- and that generally happens.

2 Q And I would agree -- I'm trying not to
3 make statements. Would you agree that --

4 A Well --

5 Q -- the public is most interested that
6 the compliance conditions are met?

7 A I -- the public is generally very
8 interested, yes.

9 Q Would you object to having the -- the
10 compliance data that is being generated by the
11 Applicant going directly to a designated community
12 representative, to make sure that the plant's in
13 compliance? Maybe even more frequently than once
14 a month.

15 A I don't know how you would designate a
16 person over another person, but I think the
17 question that Ms. Willis asked me about whether
18 the information could be made available over a Web
19 site, I think that might handle that concern. And
20 it would be available to anyone.

21 Q Again --

22 A But it -- it's also available, you know,
23 from the library, without any changes to the --
24 the section right now.

25 Q For the most part, the only thing that's

1 visual that a community representative or the
2 public can see if the plume. Many of the -- I'm
3 trying not to make -- would you agree with that
4 statement?

5 A I think there's a lot more that people
6 can see visually, than just the plume. I'm not
7 trying to be argumentative, but --

8 Q Okay. I guess would the public know
9 that there was an air quality problem just by
10 driving by or being in the vicinity --

11 A Possibly --

12 Q -- recreating in the area?

13 A Possibly, but probably unlikely, if it
14 was a minor problem.

15 Q If the plant doesn't comply with the
16 Conditions of Certification, is the daily \$75,000
17 fine imposed immediately?

18 A No, it wouldn't be imposed immediately,
19 typically. The -- first the project owner, the
20 project owner's staff would be given an
21 opportunity to present their side of the story. A
22 -- a committee would probably be appointed at the
23 Commission to consider the circumstances of the
24 non-compliance, and determine what the appropriate
25 amount of the fine was.

1 Q I guess I don't understand why, if it's
2 -- it's black and white, it either can be met or
3 it can't be met, and if it's not met, why wouldn't
4 you impose the fine?

5 A If a condition is inadvertently not met
6 and it's correctable, and it is corrected, and it
7 doesn't appear that it was committed deliberately,
8 then a fine would -- would not be appropriate.

9 Q So you're more interested in letting the
10 problem happen, but correcting it, instead of
11 imposing a fine? You want it corrected versus
12 impose fines.

13 A No, I -- I don't want the problems
14 committed in the first place. However, imposing a
15 fine is -- is imposing a fine on a problem that's
16 already occurred, so it doesn't -- I'm not sure I
17 follow what you're saying.

18 I'm just saying that typically we don't
19 rely on fines for every sort of non-compliance.
20 And particularly some are not -- some are not
21 black and white. Many are not black and white.
22 They're matters of judgment and opinion.

23 Q I mean, I find it rare that I even hear
24 that a company gets fined the daily amount. But
25 here -- here we're going through the process as

1 public people, and we see that there's several
2 conditions that have to be met, and if they're not
3 met I would think, as a public member, there's a
4 penalty for that. So I'm trying to understand why
5 you don't -- I mean, even if it's a mistake,
6 you've got to pay the consequences for your
7 mistakes, you know.

8 MS. WILLIS: I'm going to object and ask
9 Mr. Scholz to ask a question.

10 MR. SCHOLZ: It seems to be more policy
11 related than Mr. --

12 BY MR. SCHOLZ:

13 Q Is it your -- do you have that
14 discretion? I mean, is it your personal opinion
15 that you shouldn't impose a fine? Is that just
16 the way the CEC works? Help me understand.

17 A I would certainly be a key player in
18 making a recommendation whether a fine was
19 appropriate or not.

20 Q Okay. I believe I have one more
21 question.

22 This is not directed at you, but how do
23 mistakes get made? Like in the recent discovery
24 that the Applicant built a power tower on land not
25 their own, and --

1 PRESIDING MEMBER LAURIE: Mr. --

2 MR. SCHOLZ: -- without even being aware
3 of it --

4 PRESIDING MEMBER LAURIE: -- wait, wait,
5 wait, wait. I'm not going to permit that question
6 because it's vague.

7 MR. BOYD: Stan? You'll note my
8 objection.

9 HEARING OFFICER VALKOSKY: Objection
10 noted, Mr. Boyd.

11 MR. SCHOLZ: I can go into five
12 questions to try to get this. I was just trying
13 to do it in one. I'm sorry.

14 PRESIDING MEMBER LAURIE: Mr. -- you
15 lost that one, Stan, when you hit all the
16 highlights of the things that are going on there.

17 MR. SCHOLZ: Well, that was the idea.

18 HEARING OFFICER VALKOSKY: Mr. Munro,
19 you testified you have, I believe, a passing
20 familiarity with --

21 THE WITNESS: Yes.

22 HEARING OFFICER VALKOSKY: -- the Los
23 Medanos project.

24 THE WITNESS: Yes.

25 HEARING OFFICER VALKOSKY: Okay. Does

1 that familiarity extend to knowing what happened
2 in that case to apparently put it in violation of
3 the Conditions of Certification?

4 THE WITNESS: I don't know exactly --
5 exactly what happened that -- that put it into
6 non-compliance, and I -- I don't know that anybody
7 has a clear answer to that. It appeared to be a
8 serious misjudgment.

9 HEARING OFFICER VALKOSKY: Okay. Are
10 you aware of what measures the compliance unit
11 and/or the Commission are taking in the Los
12 Medanos case?

13 THE WITNESS: I am aware that the
14 Commission's delegate agent, the -- the building
15 official for the job, stopped the job as soon as
16 they were aware of this non-compliance. The
17 Energy Commission Compliance Project Manager and
18 Staff conducted an investigation of it. They
19 recommended that that stop order be continued
20 until such time as the project owner submitted a
21 request for amendment to make that change, which
22 they should've done in the first place. And
23 which, had they done in the first place, it would
24 probably be no issue whatsoever.

25 HEARING OFFICER VALKOSKY: Okay. And

1 what is the present status of the amendment? If
2 you know.

3 THE WITNESS: The amendment has been
4 filed, and I believe that it will be -- possibly
5 go for a Committee assignment --

6 HEARING OFFICER VALKOSKY: Okay.

7 THE WITNESS: -- this month.

8 HEARING OFFICER VALKOSKY: Now, is -- is
9 that being handled in concert with the typical
10 procedures in place at the Commission?

11 THE WITNESS: Yes.

12 HEARING OFFICER VALKOSKY: Thank you.

13 THE WITNESS: To my knowledge.

14 HEARING OFFICER VALKOSKY: Okay. Thank
15 you.

16 MR. SCHOLZ: Thank you, Stan, for
17 helping me out. I'll try not to be vague.

18 BY MR. SCHOLZ:

19 Q Was a CEC person at the site when they
20 first broke ground on that tower?

21 MS. WILLIS: I'm going to object and --

22 HEARING OFFICER VALKOSKY: Yeah, I think

23 --

24 MS. WILLIS: -- and at least advise my
25 witness to the extent that he has any personal

1 knowledge --

2 HEARING OFFICER VALKOSKY: Yeah, Mr. --

3 MS. WILLIS: -- he's already said he's
4 not the compliance manager.

5 HEARING OFFICER VALKOSKY: I think --

6 MR. SCHOLZ: Okay. Can I do it
7 hypothetically?

8 HEARING OFFICER VALKOSKY: -- that's a
9 fair objection.

10 MR. SCHOLZ: I understand -- that's
11 fair, I don't think that was phrased properly.

12 BY MR. SCHOLZ:

13 Q Would someone from the CEC be available
14 when someone's breaking ground on something new,
15 to make sure that it's placed where they said they
16 were going to place it?

17 A Not necessarily. And I -- I might just
18 say, in the 40 or so projects, this is a pretty
19 unique circumstance. And that's why nobody really
20 knows how it happened. We did do an
21 investigation, of course, to determine whether
22 there was any immediate -- immediate threat to the
23 environment, or to public health and safety. And
24 there wasn't, from that standpoint.

25 I -- I might just say that I'm aware

1 that a fine was paid --

2 Q Right.

3 A -- and I think some credit is due for
4 recognizing that this error was made and paying
5 that fine.

6 Q Did I understand you --

7 A At some --

8 Q -- that -- I'm sorry -- you'd consider
9 this a non-issue -- if they had asked to put it at
10 this location versus the original location, it
11 probably would've been granted so it's really --

12 A My --

13 Q -- not a major issue? Is that the way I
14 understood it?

15 A Well, that's a good question, because
16 let me just --

17 PRESIDING MEMBER LAURIE: Well, Mr.
18 Munro, wait a minute.

19 THE WITNESS: Yeah.

20 PRESIDING MEMBER LAURIE: This gentleman
21 is not involved in that case. If you want to ask
22 him about procedure, ask him about procedure. I
23 think we've covered the generalities of that.
24 It's not Mr. Munro's position to determine the
25 substantiality of that violation.

1 MR. SCHOLZ: I understand that. He -- I
2 believe, in response to Mr. Valkosky, he -- I was
3 trying to understand what he said. He thought it
4 was a non-issue because if they had asked, they
5 would've -- it would've probably been allowed
6 there, is what I thought I heard.

7 PRESIDING MEMBER LAURIE: Well, that --
8 that's fine. That's as far as --

9 MR. SCHOLZ: That's all I was
10 clarifying.

11 THE WITNESS: I can answer that
12 procedurally. Procedurally, when projects are
13 built sometimes there's a miscalculation made, and
14 something that they anticipated would be done one
15 way needs to be done another way. And when that
16 happens, then the normal procedure is they submit
17 a petition, an amendment petition, to change
18 whatever the project feature is. Staff analyzes
19 that, the public is notified, workshops are held
20 if it's a significant matter, hearings may be
21 held.

22 But, you know, that's the way that the
23 change is made, and -- and most of the time the
24 changes are justified and they're made, and
25 they're approved by the Commission.

1 MR. SCHOLZ: I believe that's the end of
2 my questions. Thank you.

3 HEARING OFFICER VALKOSKY: Thank you,
4 Mr. Scholz.

5 Mr. Williams.

6 MR. WILLIAMS: Yes, sir. Robert
7 Williams. I have a few questions.

8 CROSS EXAMINATION

9 BY MR. WILLIAMS:

10 Q My first question is as follows. Is it
11 possible to have a full-time site representative
12 at the project under the existing legislative
13 authority of the CEC? Is it just a money
14 question, or is it an authority question? I'm
15 asking could you station a man at the site full-
16 time, if -- if there was some --

17 A I don't think there's anything legally
18 that prevents that.

19 Q Okay. I'm pleased to hear that. I ask
20 that because in sites that I'm familiar with,
21 either the EPA or the NRC or the Defense Nuclear
22 Facilities Safety Board --

23 HEARING OFFICER VALKOSKY: Mr. Williams,
24 you -- Mr. Williams, you're testifying.

25 MR. WILLIAMS: Excuse me. I was just

1 trying to explain why I had the question.

2 HEARING OFFICER VALKOSKY: I understand.

3 THE WITNESS: I wouldn't recommend that
4 that be done. I think it would be a mis-
5 expenditure of public funds that's not necessary,
6 because --

7 BY MR. WILLIAMS:

8 Q Okay. Well, I appreciate your opinion.
9 I guess you get to testify and I get to ask
10 questions, so.

11 HEARING OFFICER VALKOSKY: Yep.

12 (Laughter.)

13 MR. WILLIAMS; If I don't like the
14 answers, I can only grumble.

15 BY MR. WILLIAMS:

16 Q Who -- who has the authority to issue a
17 stop work order? You may have tried to explain
18 that, but it all got mish-mashed up into
19 committees. Do you have authority to issue a stop
20 work order?

21 A The -- I would recommend that to the
22 Executive Director, or possibly to the Commission
23 itself, to issue a stop work order.

24 Q You -- you said you would -- you would
25 recommend that. Is it possible --

1 A Yes.

2 Q -- for them to delegate to a site
3 representative authority to stop work when certain
4 conditions are violated?

5 A Yes. And -- and certainly I would have
6 that authority in case there was something
7 specific in the conditions, such as coming upon a
8 cultural resource. The -- we delegate to our
9 Cultural Resource specialist on site the ability
10 to stop work. Now, if it didn't stop, they'd
11 notify me, and I -- I would stop it. If that
12 didn't stop it, it would go on up to the ultimate
13 authority very quickly.

14 Q Well, my question is, is it possible, or
15 who would we have to talk to to get a commitment
16 to have a permanent site representative during the
17 period -- during the period of construction and
18 the first two years of operation? Is that a fair
19 question?

20 A It wouldn't be me.

21 (Laughter.)

22 THE WITNESS: That's all I can tell you.

23 HEARING OFFICER VALKOSKY: Hang on for a
24 second, Mr. Williams.

25 Mr. Munro --

1 THE WITNESS: Yes.

2 HEARING OFFICER VALKOSKY: -- I believe
3 you testified that the delegate building official
4 is often on site.

5 THE WITNESS: Yes.

6 HEARING OFFICER VALKOSKY: At least on a
7 weekly or sometimes a daily basis. Is that
8 correct?

9 THE WITNESS: Yes, that is correct.

10 HEARING OFFICER VALKOSKY: Does the
11 delegate building official have the authority to
12 issue a stop work order?

13 THE WITNESS: Absolutely.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MR. WILLIAMS: Thank you.

16 THE WITNESS: And the responsibility to
17 do it.

18 MR. WILLIAMS: Well, let's see. I can
19 editorialize, but it's hard to put it in the form
20 of a question. So --

21 BY MR. WILLIAMS:

22 Q Could -- could the cost of an on site
23 inspector be paid for by fines levied for non-
24 compliance?

25 MS. WILLIS: I'm going to object. It's

1 speculative.

2 HEARING OFFICER VALKOSKY: Let's --

3 THE WITNESS: I would have no way to
4 answer that.

5 HEARING OFFICER VALKOSKY: That's fair.

6 Okay, Mr. Williams.

7 BY MR. WILLIAMS:

8 Q Has it ever been done before? What is
9 the magnitude of the collections of the CEC each
10 year for non-compliance, if you know.

11 HEARING OFFICER VALKOSKY: Okay. Well,
12 answer it if you know.

13 PRESIDING MEMBER LAURIE: Why don't ask
14 him if he knows.

15 THE WITNESS: To my knowledge, it's
16 never been done before. It's never been deemed
17 necessary. And the -- the amount of the fines is
18 negligible.

19 HEARING OFFICER VALKOSKY: Okay. But is
20 it your testimony that there is no legal
21 prohibition and it's really just a
22 management/resource issue over to whether or not
23 to assign a full-time site monitor from Staff?

24 THE WITNESS: That is my understanding.

25 HEARING OFFICER VALKOSKY: Okay. Thank

1 you.

2 MR. WILLIAMS: I appreciate that
3 clarification, Mr. Valkosky. And I have no
4 further questions at this time.

5 HEARING OFFICER VALKOSKY: Thank you,
6 Mr. Williams.

7 Mr. Boyd.

8 MR. BOYD: Mike Boyd, CARE.

9 CROSS EXAMINATION

10 BY MR. BOYD:

11 Q First let's talk a little bit about your
12 experience. You were mentioning your involvement
13 in the Crockett Cogeneration facility.

14 A Yes.

15 Q And I was -- I was actually a little
16 surprised to hear that there was a public
17 participation process of some sort in the actual
18 construction.

19 A Yes.

20 Q And my question in regards to that is,
21 was that -- you said there were like 15 meetings,
22 or how many meetings did you say they had on that?

23 A I haven't counted up the number of
24 meetings, but it was continuous during
25 construction, except for a six month period where

1 the construction process became routine and people
2 didn't show up for the meetings.

3 Q Now, was that meeting process instigated
4 by request of the public, or just by the
5 compliance office on its own?

6 A It -- there was a requirement in the
7 Commission decision for periodic meetings.

8 Q Okay.

9 A And it was actually the initiative of
10 the project owner that it be done monthly, if
11 necessary.

12 Q Okay. Now, to your knowledge, was there
13 any issues raised in any of those compliance
14 meetings that made any significant change to the
15 conditions of compliance?

16 A That made changes to the conditions -- I
17 don't think there was anything that made changes
18 to the conditions of compliance. However, there
19 was certainly input from the public that how was
20 this or that condition going to be complied with.

21 Q Did any of the members of the public or
22 other parties raise any alternative conditions, or
23 other conditions that were not adopted?

24 A I -- yeah. I believe during the start-
25 up phase there were recommendations from the

1 public that start-up conditions be -- specific
2 start-up conditions be implemented.

3 Q And -- and did the -- did the Committee,
4 or whatever the body was that this meeting was
5 before, did they consider this?

6 A Yes, they did.

7 Q And in your opinion, do you feel like
8 the -- the public had ample opportunity to
9 participate?

10 A Yes, I do believe that.

11 Q Do you believe that that opportunity was
12 for meaningful participation?

13 A Yes.

14 Q And by meaningful, I mean did they have
15 an effect on any of the conditions?

16 A Yes.

17 Q As a result of those meetings --

18 A Yes.

19 Q -- that you had.

20 A Yes.

21 Q Now, you just told me that to your
22 knowledge there was no changes to any of the
23 conditions.

24 A No, no. That's not true. I --

25 Q Okay. Clarify it.

1 A -- said on start-up conditions there
2 were concerns, and there were changes made for
3 start-up --

4 Q Okay.

5 A -- as a result of the public.

6 Q Okay. And then along this issue, the
7 same issue of the meaningfulness of participation.
8 Did you have an opportunity to see CARE's
9 prehearing brief?

10 MS. WILLIS: I'm going to object.
11 Outside the scope of his testimony.

12 HEARING OFFICER VALKOSKY: Well, I --
13 I'm going to overrule that. It's a yes or no
14 answer.

15 THE WITNESS: I may have.

16 HEARING OFFICER VALKOSKY: He either saw
17 it or not.

18 THE WITNESS: I may have.

19 BY MR. BOYD:

20 Q The reason that -- well, this might
21 bring it to your -- help your recollection. I
22 actually cited several of the Calpine's compliance
23 issues, including the Sutter --

24 A Okay.

25 Q -- and the two compliance issues at Los

1 Medanos.

2 A Okay.

3 Q I also provided a letter from a reporter
4 who was having --

5 HEARING OFFICER VALKOSKY: Okay. Mr. --

6 MR. BOYD: -- problems with
7 communication --

8 HEARING OFFICER VALKOSKY: -- Mr. Boyd

9 --

10 THE WITNESS: I haven't seen that.

11 BY MR. BOYD:

12 Q You never saw that. Okay.

13 A Yeah.

14 HEARING OFFICER VALKOSKY: That's way
15 beyond anything Mr. Munro can testify to.

16 MR. BOYD: Well, I -- what I'm trying to
17 establish is, you know, if I'm a member of the
18 public and I call the compliance office to file a
19 complaint, all right?

20 HEARING OFFICER VALKOSKY: Right, and I

21 --

22 MR. BOYD: How did they respond? And
23 I'm just trying to make sure that the press is
24 given the same opportunity as I, as a member of
25 the public, would have.

1 HEARING OFFICER VALKOSKY: Okay. Mr. --

2 MR. BOYD: And this letter speaks to
3 that issue, and --

4 HEARING OFFICER VALKOSKY: -- Mr. Munro
5 --

6 MR. BOYD: -- that's why I was raising
7 it.

8 HEARING OFFICER VALKOSKY: -- Mr. Munro
9 --

10 THE WITNESS: Yes.

11 HEARING OFFICER VALKOSKY: -- do you
12 respond to press inquiries concerning compliance
13 issues and --

14 THE WITNESS: Yes.

15 HEARING OFFICER VALKOSKY: Thank you.

16 THE WITNESS: Yes, I do.

17 BY MR. BOYD:

18 Q You do. And in your experience, is it a
19 normal practice to withhold information from the
20 press about a compliance issue or a compliance
21 violation?

22 A No. It is not a normal practice.

23 Q And if somebody did that, would there be
24 some corrective action on the part of --

25 A It's not a practice that I'm aware of at

1 all.

2 Q -- management?

3 MS. WILLIS: Objection.

4 HEARING OFFICER VALKOSKY: Yeah, that's

5 -- that's beyond the scope of Mr. Munro's

6 expertise --

7 THE WITNESS: I'm not aware of any --

8 HEARING OFFICER VALKOSKY: -- Mike.

9 MR. BOYD: Okay.

10 THE WITNESS: I -- I know I have

11 personally not withheld information from the

12 press.

13 MR. BOYD: Okay. That's fine. I'll

14 move on from that.

15 PRESIDING MEMBER LAURIE: Mr. Munro,

16 please follow the advice from your Counsel when

17 there's an objection.

18 THE WITNESS: Thank you.

19 BY MR. BOYD:

20 Q Okay. Now, going -- moving on to the

21 actual compliance. You said you had experience

22 with the Sutter -- I got the hiccups -- when did

23 the Compliance office first receive a complaint in

24 regards to the trucker, the trucks using the wrong

25 access?

1 A I think the first complaint was June or
2 July of 1999.

3 Q Okay. And was that -- was that
4 complaint from a member of the public?

5 A Yes, a member of the public.

6 Q Was that member of the public by any
7 chance a Mr. Brad Foster?

8 A It was Brad, or his wife.

9 Q Okay. Now, you're aware of Mr. Foster's
10 record, that he was an Intervenor in the Sutter
11 project?

12 A Yes.

13 Q And you also realize that he was part of
14 the legal action group?

15 A Yes.

16 Q In regards to that project --

17 A Uh-huh. Yes.

18 Q -- as well. Okay. Now, do you feel
19 that -- my other question is how soon after that
20 June complaint did the Compliance office first
21 respond to the complaint, in the form of some sort
22 of corrective action to -- to end the trips on the
23 wrong access?

24 A I -- I called the plant manager
25 immediately.

1 Q How soon after did the trips down the
2 wrong roads stop? That's what I'm trying to --

3 A They -- they stopped, and then a new
4 trucking company came on and there were more
5 trucks using the wrong route. If I can just
6 expand. It's very difficult to control individual
7 truckers, and it was a -- a larger problem than
8 was contemplated. And --

9 Q So, but you didn't really specify what
10 time period it was before the -- the trucks
11 started. Was it a month, a week, two months?

12 A I -- I do have --

13 HEARING OFFICER VALKOSKY: How long --
14 excuse me, Mr. Boyd. Mr. Munro, how long did it
15 take before the issue was resolved about the
16 truckers using the wrong road?

17 THE WITNESS: Well, it's been an issue
18 that's come up from time to time. As I mentioned
19 previously to Ms. Willis, that in the 20 months of
20 pre-construction and construction, there's been,
21 as I stated, about 14 complaints on trucks using
22 the wrong route during that period.

23 HEARING OFFICER VALKOSKY: Right. Okay.
24 So -- so this is an intermittent problem.

25 THE WITNESS: It's an intermittent

1 problem. You can resolve it with one truck
2 driver, but then another truck driver will use the
3 wrong route.

4 HEARING OFFICER VALKOSKY: Okay.

5 THE WITNESS: The -- okay.

6 BY MR. BOYD:

7 Q So in that regard, has the Compliance
8 office come up with any increased monitoring of
9 the situation? And -- and what does that mean, if
10 so?

11 A Yes. As a matter of fact, Calpine
12 placed monitors for over a month at key
13 intersections to stop the incidents. Monitors,
14 like the --

15 Q A person, or --

16 A -- yeah, a person, people.

17 Q Okay.

18 A A security firm.

19 Q Okay.

20 A They've done that on two occasions, and
21 they are currently monitoring right now. I
22 personally went out during one period to --
23 unannounced, just to see what was going on, see
24 for myself.

25 Q Part of the prehearing testimony, I

1 provided a copy of this sign that was put up.

2 A Yes.

3 Q And this shows that this didn't actually
4 occur until in November. Is that -- is that your
5 understanding of when that occurred?

6 A That is correct, but there was a period
7 of negotiation with the property owner to get his
8 permission to post the sign, and that would've
9 been done much earlier. Many months earlier.

10 Q How -- like two or three months, it was
11 --

12 A No, no, it would've been possibly as
13 much as nine months.

14 Q Really. So you could've had it in June,
15 do you think? If the property owner had
16 cooperated?

17 A Thereabout, June, July, something of
18 that -- something in that neighborhood.

19 HEARING OFFICER VALKOSKY: Okay. Mr.
20 Boyd, we're on -- we're on Metcalf, so --

21 MR. BOYD: Yeah, I understand, but we're
22 -- I'm basically speaking to the -- to the
23 Applicant's record, trying to establish the
24 Applicant's compliance with Conditions of
25 Certification. And the only thing I have left on

1 Sutter that I ask, is -- and then I will talk a
2 little bit about Los Medanos, which I understand
3 you are not involved in.

4 THE WITNESS: Correct.

5 BY MR. BOYD:

6 Q Okay. But you -- I'll ask you some
7 general questions in regards to that.

8 A Okay.

9 Q Okay. But my question is, are you aware
10 that -- or Mr. Brad Foster, or his wife, were
11 intervenors in the process. Do you know, or do
12 you have knowledge of whether or not they were
13 part of this condition on the -- the access. Was
14 that an issue that they raised in the -- in the
15 Evidentiary Hearing process? Or was this --

16 A I don't know that directly.

17 Q -- a condition that the Commission Staff
18 adopted?

19 HEARING OFFICER VALKOSKY: I think Mr.

20 --

21 THE WITNESS: I -- I don't know that
22 directly, but that --

23 MR. BOYD: That's fine.

24 THE WITNESS: -- that wouldn't be -- I
25 wouldn't be surprised at all.

1 BY MR. BOYD:

2 Q Okay. And the only reason I raise this
3 is to establish the meaningfulness of their
4 participation.

5 A Yes.

6 Q Now, the next --

7 HEARING OFFICER VALKOSKY: Okay. Mr.
8 Boyd, the issue here is understanding the
9 compliance conditions, and the general procedures,
10 the mechanism that Mr. Munro will employ to ensure
11 that the conditions are complied with. Okay?
12 Now, if you could just keep your questions --

13 MR. BOYD: I will try to not provide
14 testimony and just keep to questions.

15 HEARING OFFICER VALKOSKY: Thank you.

16 BY MR. BOYD:

17 Q Okay. Then, now, in regards to Los
18 Medanos. The -- you've heard -- you have
19 knowledge of the transmission line construction
20 compliance issue.

21 A Yes.

22 Q To your knowledge, has the -- this issue
23 has not been resolved yet, to your knowledge;
24 correct?

25 A That's correct.

1 Q And it's still -- to your knowledge, has
2 there ever been a Condition of Certification where
3 the Commission imposed a fine? That's as opposed
4 to the Applicant volunteering to accept the fine.

5 A There -- I'm aware of one other incident
6 that occurred in the eighties.

7 Q And was it of that magnitude of \$75,000?

8 A I believe it was, but I'm not absolutely
9 certain.

10 Q Okay. And is that the maximum, \$75,000?

11 A For a single incident.

12 Q For a single incident. Now, is there
13 any -- and the compliance -- compliance will make
14 recommendations on how to take corrective action
15 for this. Does that also include making the
16 Applicant remove the transmission line that they
17 have 99 percent completed?

18 A That is --

19 MR. HARRIS: I'm going to object.

20 HEARING OFFICER VALKOSKY: No, I -- I
21 think --

22 MR. BOYD: I'm just trying to find out
23 what --

24 (Parties speaking simultaneously.)

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. BOYD: -- what I'm trying to --

2 HEARING OFFICER VALKOSKY: Okay. Okay.

3 THE WITNESS: I think I can answer that.

4 It's just --

5 HEARING OFFICER VALKOSKY: Just a
6 minute. Mr. Boyd, is -- is -- and again, it's
7 really the last question I want to hear on Los
8 Medanos. But, hypothetically, assuming that part
9 of a project was built in the wrong spot, is one
10 of the options available to the Commission to make
11 the Applicant remove that and move it to a
12 conforming spot?

13 THE WITNESS: Absolutely.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. BOYD: Thank you.

16 BY MR. BOYD:

17 Q So, my only other question is, there is
18 another compliance issue at Los Medanos that
19 hasn't really been mentioned yet, which has to do
20 with the exposure of workers to --

21 PRESIDING MEMBER LAURIE: Is there a
22 question?

23 MR. BOYD: -- toxic materials. This
24 relates to the Metcalf Energy Center, as the
25 Metcalf Energy Center also has hazardous materials

1 --

2 PRESIDING MEMBER LAURIE: What's your
3 question --

4 HEARING OFFICER VALKOSKY: Ask your
5 question, Mr. Boyd.

6 BY MR. BOYD:

7 Q My question is, do -- did you have any
8 knowledge -- do you have knowledge of the -- of
9 the exposure of arsenic of --

10 PRESIDING MEMBER LAURIE: Do you have
11 personal knowledge.

12 BY MR. BOYD:

13 Q -- do you have personal knowledge, or
14 knowledge of this compliance issue with the Los
15 Medanos --

16 PRESIDING MEMBER LAURIE: Your personal
17 knowledge.

18 THE WITNESS: I have -- I have some
19 knowledge.

20 MR. HARRIS: I object to the
21 characterization as a compliance issue. It's not
22 a compliance issue.

23 MR. BOYD: Exposure to hazardous
24 materials --

25 MR. HARRIS: He's assuming facts not in

1 evidence.

2 MR. BOYD: Part of my prehearing
3 testimony -- well, I can tell you that I --

4 HEARING OFFICER VALKOSKY: Mr. --

5 MR. BOYD: -- I don't have --

6 HEARING OFFICER VALKOSKY: -- Mr. Boyd,
7 that -- that doesn't put it into evidence. You --
8 I'd suggest the more proper area of inquiry for
9 Mr. Munro is to ask him what procedures would be
10 available in the event a worker --

11 MR. BOYD: Correct.

12 HEARING OFFICER VALKOSKY: -- received a
13 dose of hazardous material.

14 MR. BOYD: Well, for example, asbestos,
15 in this case.

16 HEARING OFFICER VALKOSKY: Well,
17 hypothetically.

18 MR. BOYD: Hypothetically. What would
19 --

20 THE WITNESS: I haven't heard anything
21 about asbestos.

22 MR. BOYD: On the MEC site there is some
23 asbestos.

24 HEARING OFFICER VALKOSKY: Well, Mr. --
25 Mr. Boyd, don't go there.

1 Okay. Hypothetically, if Staff -- Mr.
2 Munro, if Staff --

3 THE WITNESS: Yes.

4 HEARING OFFICER VALKOSKY: -- received a
5 complaint about worker exposure to a hazardous
6 material, what would be the procedures that Staff
7 would follow?

8 THE WITNESS: We would personally
9 investigate. We would ask the project owner to
10 investigate. We would hire whatever experts were
11 needed to determine what the cause of the
12 complaint was, or the validity of the complaint.
13 We would require corrective measures to ensure
14 that it didn't continue to occur.

15 HEARING OFFICER VALKOSKY: Okay. So, in
16 summary, Staff would investigate it; is that
17 correct?

18 THE WITNESS: That's correct.

19 HEARING OFFICER VALKOSKY: Okay. Thank
20 you.

21 BY MR. BOYD:

22 Q And what would you do if you found that
23 there had been a exposure level that exceeded
24 federal or state guidelines? Would there be some
25 mitigation --

1 A Absolutely.

2 Q -- imposed to --

3 A To make sure that it ceased immediately.
4 Yes.

5 Q Okay. So, now, I guess the other
6 question has to do more generally with an issue of
7 what -- what you call -- what would you consider a
8 major faux pas, or a major violation of the
9 Conditions of Certification? In your opinion,
10 would the placement of a transmission line in the
11 wrong place and notification after it was 99
12 percent complete, constitute a major violation of
13 the Conditions of Certification?

14 MR. HARRIS: I'm objecting to the --

15 HEARING OFFICER VALKOSKY: Mr. --

16 MR. HARRIS: -- thinly veiled --

17 HEARING OFFICER VALKOSKY: Objection --
18 objection sustained.

19 PRESIDING MEMBER LAURIE: That's a
20 pretty general question. It's pretty general.

21 HEARING OFFICER VALKOSKY: Yeah.

22 BY MR. BOYD:

23 Q I'm trying to find out what -- I mean,
24 you brought this up yourself. What is -- what --

25

1 (Parties speaking simultaneously.)

2 THE WITNESS: There has been -- I think
3 I discussed previously the --

4 PRESIDING MEMBER LAURIE: -- we have --

5 HEARING OFFICER VALKOSKY: Excuse me.

6 PRESIDING MEMBER LAURIE: There has been
7 -- the question has been asked and answered. And
8 it relates to the health, safety and welfare of
9 the community.

10 MR. BOYD: Only in the case of health
11 and safety, not in the taking of land?

12 HEARING OFFICER VALKOSKY: That would
13 certainly be a factor.

14 PRESIDING MEMBER LAURIE: The question
15 has been asked and answered, Mr. Boyd. Move on.

16 BY MR. BOYD:

17 A Okay. So, let me double check to make
18 sure I got everything here. Oh. The last thing,
19 which is I just want to let you know that in our
20 prehearing brief we did request --

21 HEARING OFFICER VALKOSKY: Is there a
22 question for the witness?

23 BY MR. BOYD:

24 Q This is question. We did request the
25 presence of the Compliance Manager for Los Medanos

1 and Mr. Therkelsen to be available for questioning
2 on that -- that project.

3 To your -- to your knowledge, were they
4 ever so requested?

5 MS. WILLIS: Objection.

6 THE WITNESS: I'm not -- I'm not aware
7 of that.

8 MS. WILLIS: The witness --

9 MR. BOYD: Okay. So I just would note
10 that we object that those witnesses weren't
11 available for cross examination.

12 HEARING OFFICER VALKOSKY: That's fine.
13 And I'll note that the Committee viewed it as
14 irrelevant for today's proceeding.

15 MR. BOYD: It did relate to Compliance.

16 HEARING OFFICER VALKOSKY: Is there
17 anything else? Anything else for Mr. Munro?

18 MR. BOYD: No, that's it. Thank you.

19 HEARING OFFICER VALKOSKY: Any redirect?

20 Oh, I'm sorry. Again, since you didn't
21 indicate at the Prehearing Conference, keep it
22 brief and reasonable.

23 MR. AJLOUNY: Yes. I will keep it brief
24 and reasonable. But I will say that you -- I feel
25 that I've received the answer to my questions many

1 times, of do I have to put my name down to be able
2 to cross examine. I feel that I'm being labeled
3 as a black sheep or something of this whole
4 process, or harassing, because I did want my name
5 down on those things.

6 I -- so I -- I just wanted to bring that
7 up. I don't mean to be doing that, but I just
8 don't think it's fair to -- and I looked at the
9 transcripts to make sure I wasn't losing it.

10 HEARING OFFICER VALKOSKY: Okay. Issa,
11 just ask your question.

12 MR. AJLOUNY: Okay. Because I have a
13 few questions.

14 CROSS EXAMINATION

15 BY MR. AJLOUNY:

16 Q You mentioned that serious violations
17 you have the authority, and probably would close -
18 - stop -- stop building a power plant, or if a
19 power plant is in process, would you actually have
20 the power plant shut down and stop producing power
21 also? Do you have the authority for that?

22 A Yes.

23 Q Okay. And you used the word serious
24 violation. Would you consider a plume a serious
25 violation?

1 MS. WILLIS: I'm -- yeah, I'm going to
2 object.

3 PRESIDING MEMBER LAURIE: That's
4 speculative.

5 HEARING OFFICER VALKOSKY: Yeah, that's

6 --

7 PRESIDING MEMBER LAURIE: And I will not
8 require an answer.

9 MR. AJLOUNY: Wow.

10 MR. BOYD: And I object for the same
11 reason I objected before.

12 HEARING OFFICER VALKOSKY: Thank you.

13 MR. AJLOUNY: Makes me wonder sometimes.

14 Okay.

15 BY MR. AJLOUNY:

16 Q When will the pre-construction, or how
17 many days after, if -- if this power plant does
18 get approved by the Commissioners, how many days
19 after that will the pre-construction compliance
20 plan be issued, approximately?

21 A Well, that's pretty much up to the
22 project developer, as to when they intend to start
23 and -- oh, you mean -- if I understand your
24 question.

25 HEARING OFFICER VALKOSKY: Well, there's

1 --

2 BY MR. AJLOUNY:

3 Q I'm -- because no one knows how this
4 building's really going to be inside, I guess,
5 what -- how it's going to be built and all that
6 kind of stuff. So I imagine there's going to be a
7 pre-construction compliance plan. Something for
8 you guys to look at before you say okay, go for
9 it. And then -- and I'm leading to that question
10 to see if whenever that plan, or whatever you call
11 that, would the public have a chance to look at
12 that? Does the public have a chance to be
13 involved?

14 A There -- there are -- actually, I'm not
15 aware of a pre-construction compliance plan. It
16 is simply that there are certain conditions of
17 compliance that must be satisfied prior to the
18 start of the construction. And we do require that
19 they provide us a matrix containing just those
20 conditions that shows us when they're going to
21 complete the conditions, how many of them have
22 been completed, so that we can determine that
23 they've all been completed prior to the start of
24 construction.

25 Q Okay. All right. On --

1 HEARING OFFICER VALKOSKY: And are those
2 materials available to the public?

3 THE WITNESS: That would be part of the
4 monthly compliance report.

5 HEARING OFFICER VALKOSKY: Thank you.

6 BY MR. AJLOUNY:

7 Q Okay. Are you familiar with Morro Bay,
8 with Duke Energy, that power plant? And I'm
9 asking that for a specific reason.

10 A Very little. Very little.

11 Q Very little. So I imagine you are not
12 familiar with the public being involved, a nine
13 person team?

14 A No.

15 Q No. Okay.

16 A Not at all.

17 Q Well, do you have any -- do you have any
18 experience of knowing that instead of, like, one
19 person from the public, maybe a team of people, a
20 dozen, or ten people, being involved with the
21 process of when this thing is being built. It's a
22 team, so they're there, they have the right to be
23 involved with the meetings with the CEC, you know,
24 just being -- representing the public. Are you --
25 do you know of any process like that?

1 A That kind of pretty fairly describes the
2 monthly compliance meeting process that occurred
3 with the Crockett project.

4 Q Okay. Well, I -- I've just been doing a
5 lot of reading, and I -- that's the reason I'm
6 asking these questions. I don't know if -- if
7 this nine person team from the public, from Morro
8 Bay, was associated with your organization -- your
9 part of the topic, or if it's other parts of when
10 they -- you know, building it, and stuff. So I
11 just wanted to know. So you're not aware of that?

12 I will do more investigation. I just
13 didn't have time, on that part.

14 And then, you made a comment that it's
15 difficult to control truckers and the routing. So
16 that would include even ammonia trucks. It would
17 be hard -- hard to control truckers, including
18 ammonia --

19 A Ammonia truckers have much more
20 stringent requirements, say, than just, you know,
21 a guy hauling rocks.

22 Q Okay. So --

23 A So that would not be --

24 Q -- in the routing, also?

25 A -- that would not be comparable.

1 Q Okay. So in the routing of ammonia
2 truck, you --

3 MS. WILLIS: Objection. That will be
4 handled under the Hazardous Materials section.

5 MR. AJLOUNY: I'm only asking if there's
6 --

7 HEARING OFFICER VALKOSKY: I think, and
8 correct me, Mr. Munro, if I'm wrong --

9 THE WITNESS: Yes.

10 HEARING OFFICER VALKOSKY: -- but I
11 believe you testified that there was no complaints
12 concerning the truckers on the Sutter project
13 which involved ammonia, or other hazardous waste.

14 THE WITNESS: That's correct.

15 HEARING OFFICER VALKOSKY: Is that
16 correct?

17 THE WITNESS: That is correct.

18 HEARING OFFICER VALKOSKY: Thank you.

19 BY MR. AJLOUNY:

20 Q I was just referring to difficult -- you
21 made a comment of difficult to control truckers.
22 I wanted to know if that involved ammonia
23 truckers. That -- I'm just going back on what you
24 just testified.

25 If the CEC had a -- a site compliance

1 monitor, could he, or would he check the
2 serviceability of trucks and for construction?

3 A I -- I --

4 MS. WILLIS: I'm going to object as
5 speculative.

6 THE WITNESS: -- I don't know.

7 MS. WILLIS: Yeah.

8 HEARING OFFICER VALKOSKY: Okay. Well,
9 in any event, the answer is I don't know.

10 (Laughter.)

11 HEARING OFFICER VALKOSKY: You know.

12 MR. AJLOUNY: And I -- and I --

13 HEARING OFFICER VALKOSKY: And I think
14 the answer to that actually would be if it was
15 required specifically in a condition, which, as
16 Ms. Willis indicates, is probably more
17 appropriately dealt with under Hazardous Waste, or
18 possibly Traffic and Transportation.

19 MR. AJLOUNY: Okay. Then I just will
20 formally object to not agreeing with this plume
21 issue, if that's a serious offense or not. That
22 was just a general question, is a plume considered
23 a serious offense?

24 MS. WILLIS: Objection.

25 MR. AJLOUNY: Well, I know. I just --

1 MS. WILLIS: Asked and answered.

2 HEARING OFFICER VALKOSKY: Right. No,
3 it --

4 MR. AJLOUNY: I just wanted to make my
5 objection --

6 HEARING OFFICER VALKOSKY: Okay. Noted.
7 Ms. Cord.

8 MS. CORD: Thank you. I had a question
9 for Mr. Munro.

10 HEARING OFFICER VALKOSKY: Sure.

11 CROSS EXAMINATION

12 BY MS. CORD:

13 Q You mentioned a delegate building
14 official that would be on site daily. Would it be
15 within the scope of the duties of the delegate
16 building official to make a notation of the fact
17 if a project owner hypothetically built a portion
18 of their facility on property they didn't own?

19 A We would certainly hope they would do
20 that.

21 Q Okay. And --

22 A We would expect them to do that.

23 Q Okay. And this delegate building
24 official you said would be responsible to the
25 Energy Commission. Who would be responsible for

1 paying the delegate building official in this
2 case?

3 A The -- the payment is provided by --
4 would be provided by Calpine.

5 Q Okay.

6 A But not -- it would be provided to the
7 city, not directly to this individual.

8 Q Okay.

9 HEARING OFFICER VALKOSKY: All right.
10 Mr. -- excuse me one second, Ms. Cord.

11 THE WITNESS: It's the city where this
12 --

13 HEARING OFFICER VALKOSKY: Right. Isn't
14 it true that the delegate building official is
15 typically a city or a county employee?

16 THE WITNESS: Could be a city or county
17 employee, or it could be a third county -- party
18 firm that provides that function.

19 HEARING OFFICER VALKOSKY: For the city
20 or county.

21 THE WITNESS: Correct.

22 HEARING OFFICER VALKOSKY: Correct.

23 Okay.

24 MS. CORD: Thank you for clarifying
25 that.

1 BY MS. CORD:

2 Q Lastly, do you have knowledge, Mr.
3 Munro, of any instance where a project owner built
4 a portion of their facility on land they didn't
5 own, and were later compelled to remove that
6 facility?

7 A I'm not aware that that's -- that that's
8 happened.

9 MS. CORD: Thank you.

10 HEARING OFFICER VALKOSKY: Any redirect,
11 Ms. Willis?

12 MS. WILLIS: I just have a couple of
13 questions, and most of these have been asked, and
14 I think Mr. Valkosky covered most of it.

15 REDIRECT EXAMINATION

16 BY MS. WILLIS:

17 Q The chief building official reports
18 directly to you at the Energy Commission, or -- or
19 who?

20 A The chief building official would be a
21 -- typically the chief of the city building
22 office. They would not -- they would be given the
23 authority to monitor the construction.

24 Q And they would have the authority to
25 stop the project?

1 A Yes.

2 Q Do you have interaction with the chief
3 building official during construction?

4 A Yes.

5 Q And how often? Do you meet with them
6 regularly, or --

7 A We would receive copies of submittals
8 that were made to that person, but we wouldn't
9 necessarily meet with him on a regular basis.

10 Q In Sutter, how many different
11 intervenors or members of the public complained to
12 you about the truck traffic?

13 A Regarding truck traffic, that would be
14 three people.

15 Q Three people. And the trucks were not
16 carrying any hazardous materials; is that correct?

17 A Correct.

18 MS. WILLIS: That's all I have.

19 HEARING OFFICER VALKOSKY: Okay. Mr.
20 Harris?

21 MR. HARRIS: Mercifully, I don't have
22 anything.

23 HEARING OFFICER VALKOSKY: Okay. Any
24 recross confined to the scope of the redirect?

25 None. Okay. Thank you, Mr. Munro.

1 THE WITNESS: Thank you.

2 HEARING OFFICER VALKOSKY: All right.

3 Is there any public comment which is related
4 solely to the topic of Compliance and General
5 Conditions, which we have just covered?

6 Seeing none, we'll close that topic.

7 All right. We will now take a supper
8 recess until 7:15. I'm informed -- yeah. We'll
9 be back at 7:15. I'm informed that the room will
10 be locked. Is that correct? In case anyone wants
11 to leave their materials here.

12 And what time are you going to be back
13 to open it up? Okay. And it'll be reopened at
14 7:00. See you later.

15 (Thereupon the dinner break was
16 taken.)

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1 with -- with Mr. Livingston.

2 TESTIMONY OF

3 JOHN E. LIVINGSTON

4 called as a witness on behalf of the Applicant,
5 having been first duly sworn, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARRIS:

9 Q Mr. Livingston, will you please state
10 your complete name for the record?

11 A John E. Livingston.

12 Q And what subject matter are you here to
13 testify about this evening?

14 A The Geologic Hazards and Resources.

15 Q And specifically, which documents are
16 you sponsoring as part of your testimony?

17 A Specifically, Section 8.15 of the AFC,
18 Supplements A and C to the AFC, responses to
19 informal CEC Data Requests regarding revised
20 grading and drainage plan, and the revised boring
21 plan.

22 Q Okay. The first two items are already
23 in evidence as exhibits. I'd offer the third
24 item, the responses to the informal CEC Data
25 Requests regarding revised grading plan, grading

1 and drainage plan, and revised boring plan, as a
2 new exhibit.

3 HEARING OFFICER VALKOSKY: Okay. We'll
4 mark that as Exhibit 19.

5 (Thereupon Exhibit 19 was marked
6 for identification.)

7 MR. HARRIS: We had it as 20.

8 HEARING OFFICER VALKOSKY: Oh -- what
9 did you -- off the record, please.

10 (Off the record.)

11 MR. HARRIS: Thank you. I guess we'd
12 make that Item 19, then, the responses.

13 BY MR. HARRIS:

14 Q Are there any changes or corrections to
15 your testimony?

16 A No.

17 Q And were these documents prepared either
18 by you or at your direction?

19 A Yes.

20 Q Are the facts stated therein true to the
21 best of your knowledge?

22 A Yes.

23 Q And are the opinions stated therein your
24 own?

25 A Yes.

1 Q And do you adopt this as your testimony
2 for this proceeding?

3 A Yes.

4 Q Could you very briefly describe your
5 qualifications?

6 A I have a Master's degree in Civil and
7 Geotechnical Engineering from the University of
8 California at Davis. I've been practicing as a
9 Geotechnical Engineer with CH2MHILL for 26 years,
10 and have done numerous types of projects.

11 Q Okay. Thank you. In the interest of
12 time, can you provide us with a short summary of
13 your testimony, please?

14 A Yes. Basically, I have taken the
15 existing literature on the geology and the
16 seismicity of the Metcalf project site area, and
17 have compiled it into the document, Section 8.15.
18 We have looked at the geology in the area. The
19 site actually contains soil with bedrock
20 underlying it at a depth of approximately 80 feet,
21 and part -- and part of it in deeper bedrock in
22 other areas.

23 We've plotted the locations of all the
24 faults that we've -- we've found in the area,
25 based on existing literature, and found that there

1 are no faults that go through the site, and that
2 the site design will comply with all the
3 applicable LORS, and that it would be built in
4 conformance with those applicable regulations.

5 Q Did you have a chance to review the
6 Final Staff Assessment?

7 A Yes.

8 Q And did you review the Conditions of
9 Certification in that assessment?

10 A Yes.

11 Q And do you find those conditions to be
12 acceptable?

13 A Yes.

14 MR. HARRIS: Okay. I guess at this
15 point I would make the witness available for cross
16 examination.

17 HEARING OFFICER VALKOSKY: Okay. Just a
18 couple of questions.

19 You indicate on the second page of your
20 testimony, which actually says page 12, that there
21 have been 12 recorded earthquakes of magnitude six
22 or greater in the San Francisco Bay Area in recent
23 history. Could you just bracket what you mean by
24 recent history for me?

25 THE WITNESS: Including 1906 on.

1 HEARING OFFICER VALKOSKY: Okay. So
2 basically since 1906.

3 THE WITNESS: Yes.

4 HEARING OFFICER VALKOSKY: All right.
5 And also, on the same page, under mitigation, you
6 indicate that -- that it'll be -- the project
7 would be designed according to the 1997 UBC and
8 the 1998 CVC.

9 Now, getting a little ahead of myself,
10 but I recall from the Facility Design that there's
11 a proviso that it either be these codes or such
12 stricter code as may be in force at the time the
13 project is built. Is there a fair qualification
14 to your statement?

15 THE WITNESS: Yes. I believe these are
16 the documents, though, that are in force right
17 now.

18 HEARING OFFICER VALKOSKY: They're in
19 force presently, right, and I -- I believe the
20 condition I'm referring to in Facility Design is
21 prospective in nature. Should something more
22 stringent be -- be enacted, that that will then
23 apply.

24 THE WITNESS: Yes.

25 HEARING OFFICER VALKOSKY: Okay.

1 PRESIDING MEMBER LAURIE: Stan -- Mr.
2 Valkosky, that's at the time that the building
3 permit is pulled? What -- what tolls the --

4 HEARING OFFICER VALKOSKY: No. No, I
5 think it's -- well, yeah, I believe it's the time
6 the building permit is -- is pulled, and, of
7 course, depending on what's been enacted at that
8 time.

9 PRESIDING MEMBER LAURIE: At the time
10 the permit is pulled.

11 HEARING OFFICER VALKOSKY: I believe
12 that's the case.

13 We'll certainly explore that with the
14 Facility Design people, though.

15 Lastly, Mr. Livingston, in its prefilling
16 brief, CARE contends that the -- there are two
17 faults, namely the Piercy and Bernal Faults
18 nearby. Are you familiar with either of these?

19 THE WITNESS: Yes.

20 HEARING OFFICER VALKOSKY: Okay. Would
21 they in any way require further study, or could
22 they impact the stability of the project?

23 THE WITNESS: No more than the other --
24 all of the other faults that are in the area. The
25 -- there are many faults on both sides of the site

1 as the San Andreas goes northward, and it splits
2 into the two forks that go around the Bay. I
3 would actually expect that the shaking at the site
4 would be mainly from breakage along one of those
5 main faults. These other faults that you spoke of
6 are either very old and they -- there is no
7 information on the reoccurrence interval, or they
8 -- they're not known to pass through the site, and
9 therefore -- and there -- there isn't enough
10 information on those faults to basically say if
11 they would have an effect on the project design.

12 The -- the UBC takes into account the
13 strong shaking that you will get from a major
14 earthquake any place in the whole huge area or San
15 Francisco and the whole Peninsula, along the whole
16 San Andreas Fault. Seismic Zone 4 is the highest
17 and strongest design criteria for earthquakes in
18 the whole United States. So no matter which
19 faults are in the area, it would be still designed
20 for in compliance with the California UBC.

21 HEARING OFFICER VALKOSKY: Okay. And
22 that would essentially subsume any activity that
23 -- that may occur on the Piercy and Bernal Faults.

24 THE WITNESS: Yes.

25 HEARING OFFICER VALKOSKY: Okay. Thank

1 you.

2 Ms. Willis, any --

3 MS. WILLIS: No questions.

4 HEARING OFFICER VALKOSKY: The only
5 Intervenor that I had indicated for cross
6 examination on this was CARE. Is Mr. Boyd still
7 with us, or did he leave? Does anyone know?

8 Sorry. Mr. Wade.

9 MR. WADE: Mike Boyd asked me to submit
10 the exhibit that you just described into the
11 record, and to discuss it. I see that you've
12 raised some of the questions that I, on behalf of
13 Mike, wished to raise.

14 So beyond that, I have no -- no further
15 questions.

16 HEARING OFFICER VALKOSKY: Okay, thank
17 you. And I'll note that the prehearing brief is
18 part of the record of the proceeding. It was
19 properly and timely filed.

20 Any other questions? Mr. Williams,
21 again, we're -- we're in the area of latitude now,
22 so --

23 MR. WILLIAMS: Thank you, sir. I'll --

24 HEARING OFFICER VALKOSKY: -- keep it
25 short and brief.

1 MR. WILLIAMS: -- try to be brief.

2 CROSS EXAMINATION

3 BY MR. WILLIAMS:

4 Q I'd like to -- forgive me, Mr. Witness,
5 I missed your name.

6 A Livingston.

7 Q Livingston. Thank you.

8 Do you have page 576 of the FSA, the
9 part on liquefaction, hydrocompaction and
10 expansive soils, page 576 at the top. Let me read
11 it while you're -- or could you -- could you read
12 the sentence here, beginning with, Staff reviewed
13 the boring logs.

14 A Which paragraph are you on?

15 Q I'm in the top paragraph, liquefaction.
16 You can see where I've highlighted it in yellow
17 here, if you look over this way. Or I can --
18 Staff have reviewed the boring logs provided by
19 the Applicant and find that certain areas of the
20 power plant footprint may be susceptible to
21 liquefaction using the Applicant's own criteria of
22 high ground acceleration apogee, high groundwater
23 elevation, and so forth.

24 Do you agree with that?

25 A The geotechnical exploration that was

1 conducted at this site, with five borings that
2 have been done so far, indicate that there is not
3 a liquefaction concern at this site for the
4 structures that are proposed.

5 Q Sounds to me like you said you disagree
6 totally with what it says here. It says it has a
7 high potential for liquefaction. May be
8 susceptible for -- to liquefaction.

9 MR. HARRIS: Excuse me, Mr. Williams.
10 What page are you on?

11 MR. WILLIAMS: I'm on page 576, about
12 lines approximately six through ten.

13 BY MR. WILLIAMS:

14 Q Is it not correct, sir, that when the --

15 HEARING OFFICER VALKOSKY: Mr. --

16 MR. WILLIAMS: -- groundwater level --

17 HEARING OFFICER VALKOSKY: Excuse me.

18 Mr. Williams, does the sentence you're reading,
19 does it start, the power plant footprint may be
20 susceptible to liquefaction?

21 MR. WILLIAMS: It says, Staff have
22 reviewed the boring logs provided by the Applicant
23 and find that certain areas of the power plant
24 footprint may be susceptible --

25 HEARING OFFICER VALKOSKY: Yeah, okay.

1 We're on -- we're on the same page.

2 So, Mr. Livingston, I guess the question
3 is, do you agree with that statement in Staff's
4 testimony, that certain areas may be susceptible
5 to liquefaction, using the Applicant's own
6 criteria of high ground acceleration.

7 THE WITNESS: Based -- based on the five
8 borings that are included, yes, I disagree that
9 that is true that there is a high potential for
10 liquefaction.

11 HEARING OFFICER VALKOSKY: No, no. I'm
12 -- I'm not saying high potential. I'm saying the
13 words as written, which, as I read it, say it may
14 be susceptible to liquefaction. Are we reading from
15 different versions, or --

16 MR. WILLIAMS: I think we're reading the
17 same version, and he apparently disagrees with the
18 Staff's --

19 MR. HARRIS: Well, let's make sure he's
20 got the same version, because in my document,
21 that's on page 575.

22 MR. WILLIAMS: On -- on a page dated
23 October 10th, 2000?

24 MR. HARRIS: Okay. Can we go off --

25 HEARING OFFICER VALKOSKY: Off the

1 record, please.

2 (Off the record.)

3 HEARING OFFICER VALKOSKY: Before we --
4 before we move off this, I am reading from page
5 576 of the printed version of the Final Staff
6 Assessment, and the operative phrase is the power
7 plant footprint may be susceptible to liquefaction
8 using the Applicant's own criteria, et cetera.

9 The question, Mr. Livingston, is do you
10 agree or disagree with that statement?

11 THE WITNESS: I want to explain my
12 answer by saying that we can agree that it -- yes,
13 it may be susceptible to liquefaction. However,
14 my review of the information is that it is not
15 conclusively susceptible to liquefaction.

16 HEARING OFFICER VALKOSKY: Okay. Would
17 you feel comfortable assigning any sort of
18 numbered degree of probability to that?

19 THE WITNESS: I -- no. I --

20 HEARING OFFICER VALKOSKY: No? Okay,
21 that's fine. That's fine.

22 MR. WILLIAMS: I appreciate your help,
23 Stan. Let me continue that line of questioning.

24 BY MR. WILLIAMS:

25 Q In a seismic four area, the highest

1 seismic acceleration, would not you expect the
2 ground acceleration to be greater than .5 G?

3 A The -- no, I wouldn't necessarily accept
4 the --

5 Q What do you mean by necessarily?

6 A The contours of acceleration that are --
7 are given by Caltrans for this exact location
8 indicate somewhere between .4 and .5 G would be
9 the peak bedrock acceleration. So that is where
10 the number is generated from. It's from contour
11 maps of acceleration that Caltrans has developed.

12 Q In other parts of this section,
13 magnitude 7.1, and even at other parts of the FSA,
14 magnitude 8 accelerations are referred to. Now,
15 it's my limited understanding that those
16 magnitudes imply a higher ground acceleration than
17 .5. Is that correct? Magnitude --

18 A No, that's incorrect.

19 Q Okay. How -- what would be the ground
20 acceleration of a magnitude 8 earthquake?

21 A The magnitude of the acceleration at
22 your site is dependent on the distance from the
23 fault --

24 Q I understand --

25 A -- that is generating that earthquake.

1 If you are generating a magnitude 7 or 8
2 earthquake at some distance, which is what is
3 assumed, and the current geologic framework
4 indicates, that -- as that motion travels to the
5 site it is going to be decreased in intensity, and
6 at this site it would be on the order of a .4 to
7 .5 G.

8 Q I see. Does that take into account the
9 potential of an earthquake on the Piercy or Bernal
10 Faults that were just referred to?

11 A Yes. Based on -- yes, it does.

12 Q And what is the magnitude earthquake
13 that you believe the Piercy Bernal Fault is
14 capable of?

15 A The Piercy and Bernal Faults are not
16 considered active faults by the current -- based
17 on the current literature that we have. They are
18 believed to have moved somewhere between 700,000
19 and two million years ago, and therefore the
20 current thinking on those faults is that they are
21 not likely to be active in the -- in the
22 foreseeable future. So geologists do not use
23 those in defining the distance from a site to the
24 fault.

25 Q Okay. So the -- my understanding is

1 that the Bernal Fault is considerably closer to
2 the site, as -- as is the Piercy Fault. By -- by
3 this map here, Figure 8.15-2, regional faults by
4 CH2MHILL, 8.15-2. Be happy to show it to you.

5 A I have it.

6 Q I have a pretty, colored version.
7 Aren't -- aren't they much closer than one mile to
8 the Metcalf Center?

9 A The scale on my map would indicate
10 they're probably about 1.5 miles to the closest
11 point of the Bernal Fault, and probably on the
12 order of one mile to the Piercy Fault.

13 Q Okay. Because -- I ask my question
14 because the fault was dotted, and it appeared to
15 me to be logical to extend the Bernal Fault to the
16 Pierce Fault. They would pass right under Tulare
17 Hill. That's not logical, in your mind? Have --
18 have you been to Tulare Hill and seen that big
19 rift?

20 A I have been to the site, and walked the
21 hill. Yes.

22 Q Do you think that canyon that heads up
23 the northerly side and down the southerly side is
24 the effect of a fault?

25 A No, I don't know.

1 Q You don't know.

2 A I don't know.

3 Q Should trenching studies be done to
4 confirm whether that is the case?

5 A I don't know if trenching studies would
6 tell you whether the fault had moved in more
7 recent time than is thought, in the somewhere
8 between 700,000 and two million years ago.

9 Q I agree. They might, or might not.
10 Would you consider it professionally sound to
11 recommend such studies?

12 A No.

13 Q And your reason is?

14 A Could you clarify --

15 Q Why -- why --

16 A -- your question?

17 Q -- would you not spend a few thousand
18 dollars on a study that might reveal an active
19 fault very near the site?

20 A Because on all these projects you have
21 to decide how far away from the site you're going
22 to go. There has to be a point where you stop
23 looking for information, due to just time
24 constraints and economic constraints. And because
25 there is -- this Bernal Fault is long enough that

1 -- that some other -- other people have already
2 studied it and decided that it ends someplace on
3 the eastern -- no, western side of Tulare Hill,
4 and so because the project is not being sited on
5 Tulare Hill, it's being sited in the soils that
6 are below the hill, I wouldn't go up there and
7 look for it.

8 Q My only reason for suggesting that is
9 that that's where you would find an indication of
10 offset, and you would be able to get some
11 indication --

12 MR. HARRIS: I'm going to object on the
13 basis --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. HARRIS: -- that the question's been
16 answered.

17 HEARING OFFICER VALKOSKY: Yeah, it has
18 been.

19 MR. WILLIAMS: Let me --

20 MR. HARRIS: And anything further --

21 HEARING OFFICER VALKOSKY: Mr. Williams,
22 again --

23 MR. HARRIS: -- is calling for
24 speculation.

25 HEARING OFFICER VALKOSKY: -- we'd like

1 to remind you that you did not indicate a desire
2 to cross examine.

3 MR. WILLIAMS: Okay. One more area, if
4 I may. This is the area of potential
5 inconsistency.

6 BY MR. WILLIAMS:

7 Q Let me direct your attention to page
8 161.

9 HEARING OFFICER VALKOSKY: Of what?

10 MR. WILLIAMS: Of the FSA.

11 HEARING OFFICER VALKOSKY: And what is
12 that section?

13 MR. WILLIAMS: That is going to be
14 covered by the Hazard Materials guy. Maybe you
15 want to deal with that later. But in the top
16 paragraph on page 161, it says, The proposed
17 project is located in an area with low potential
18 for liquefaction.

19 BY MR. WILLIAMS:

20 Q Now, it sounds like you agree with the
21 statement in the Haz Mat section, and not the
22 statement in the Faulting and Seismicity section.
23 is that correct? Did you have an opportunity to
24 look at page 161, sixth line down.

25 A I believe I've answered the question on

1 whether or not I believe, and what the --

2 HEARING OFFICER VALKOSKY: Yeah, I think

3 --

4 THE WITNESS: -- potential for
5 liquefaction is.

6 HEARING OFFICER VALKOSKY: And we've --
7 we've been over that ground already --

8 MR. WILLIAMS: Okay.

9 HEARING OFFICER VALKOSKY: -- Mr.
10 Williams.

11 MR. WILLIAMS: Well, thank you. I --
12 let me just -- thank you. I -- I rest at this
13 point.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. AJLOUNY: I only have three --

16 HEARING OFFICER VALKOSKY: All right,
17 take you at your word.

18 MR. AJLOUNY: I'm getting better at
19 this.

20 CROSS EXAMINATION

21 BY MR. AJLOUNY:

22 Q Okay. You mentioned that there were
23 holes bored on the site, five holes?

24 A Yes.

25 Q How far apart were those holes?

1 Approximately, just an idea.

2 A I'm looking for a scale on the site
3 plan, which is Figure 10G 4-1.

4 MR. WILLIAMS: On what page?

5 THE WITNESS: It's in -- the Bechtel
6 Geotechnical Report is Appendix 10G, and there is
7 a scale at the lower right. I would guess that
8 the borings are on the order of, oh, a hundred
9 feet or so apart.

10 BY MR. AJLOUNY:

11 Q Okay. And that would be basically
12 within the 10 or 20 acres of where the plant's
13 proposed?

14 A Yes.

15 Q Okay. So in that general -- and
16 approximately when was that bored? Month would be
17 fine.

18 A I believe April of '99.

19 Q Okay. And did you take into
20 consideration that the plant was moved to satisfy
21 some hundred feet -- whatever you call that thing,
22 riparian setback?

23 MR. HARRIS: I think I'd object to the
24 question. It's not an accurate statement.

25 MR. AJLOUNY: Well --

1 MR. HARRIS: The plant was not moved.

2 MR. AJLOUNY: There was --

3 MR. HARRIS: The reconfiguration, are
4 you asking about the reconfiguration of the site?

5 MR. AJLOUNY: Yeah. I thought I
6 understood -- all right.

7 HEARING OFFICER VALKOSKY: I thought I
8 understood it, too. Go ahead.

9 BY MR. AJLOUNY:

10 Q It was moved, and I just wondered if
11 that was taken into consideration --

12 A Yes.

13 Q It was. So you don't feel there's any
14 need to check it out on where the plant is going
15 to be today versus where it was in April, where it
16 was planned at the time you took the drilling. Do
17 you see any reason to check and maybe re-bore some
18 holes?

19 A Yes.

20 Q The -- I'm sorry.

21 A There are five borings that were done
22 under what's called Phase 1 of the exploration.

23 Q Okay.

24 A There are approximately 20 more borings
25 planned.

1 Q Planned.

2 A When the positions of the structures are
3 exactly determined, the additional borings will be
4 done under a Phase 2 exploration, to develop
5 specific exact recommendations for each of those
6 structures.

7 Q Okay. And that, I imagine that
8 information, when you do those type of things, the
9 public will be advised of what the findings were,
10 and things like that, I imagine. Is that true?

11 A That would --

12 HEARING OFFICER VALKOSKY: I'm not sure
13 the witness can answer this, but my understanding
14 -- and please, Mr. Richins or Ms. Willis, correct
15 me if I'm wrong -- would be done post-
16 certification, assuming, of course, the plant is
17 certified. That would be information that would
18 be submitted to Mr. Munro, the Compliance Project
19 Manager, and, you know, would just follow the
20 process that he -- he elaborated upon.

21 MR. AJLOUNY: Okay.

22 HEARING OFFICER VALKOSKY: Is -- is that
23 correct, Mr. Richins?

24 MR. RICHINS: I can't answer that
25 question. I don't know.

1 HEARING OFFICER VALKOSKY: So that
2 wouldn't be part of the -- the normal pre-
3 construction activities? Okay.

4 MR. AJLOUNY: Stan, when is it
5 appropriate to maybe suggest -- I mean, I know
6 this is just cross examination, but, like for this
7 instance, is there a way that I can input and
8 suggest that that would be a condition that we
9 know about these boring of holes, or make sure
10 we're notified? Is this the time to do it, or do
11 I make notes and then at comment section ask for
12 all these things?

13 HEARING OFFICER VALKOSKY: I think -- I
14 think that would be a legitimate question to
15 address to Staff's witness.

16 MR. AJLOUNY: Oh, to -- okay.

17 HEARING OFFICER VALKOSKY: I'm saying
18 Staff's witness, because the Staff testimony is
19 that testimony which --

20 MR. AJLOUNY: Okay.

21 HEARING OFFICER VALKOSKY: -- contains
22 the Conditions of Certification. That's the only
23 reason.

24 MR. AJLOUNY: Okay. Then I just have
25 one more area of questioning.

1 BY MR. AJLOUNY:

2 Q Sir, you mentioned that Bernal is one
3 mile away, approximately, from the proposed site.
4 Bernal -- what did I say? Yeah, Bernal Fault.

5 A On Figure 8.15-2, under our regional
6 faults, based on using the map scale, the fault is
7 about a mile -- mile and a half from the site.

8 Q Okay. You're also -- and I'm looking at
9 that diagram. Do you have any opinion, you
10 mention that the Bernal Fault and the Pierce Fault
11 are old faults, and hundreds of years ago kind of
12 faults. What about the -- do you have any opinion
13 of the Santa Clara Fault?

14 A The Santa Clara Fault, as shown on that
15 same figure, is of the same order of age. If you
16 would look at the --

17 Q I can't read it. I can't read the
18 writing.

19 A Well, on Figure 8.15-2 of a readable
20 document, it says that the age of those two faults
21 is on the order of 700,000 to two million years
22 ago. So there is no --

23 Q Okay.

24 A -- recorded movement along those faults
25 in more recent times that they've found, so far.

1 MR. AJLOUNY: Okay. And that's --
2 that's what I wanted to ask, is how recent, or how
3 old. I can't -- even if my eyes are 20/20, I
4 wouldn't be able to read this.

5 But anyway, thank you. That's my
6 questions.

7 HEARING OFFICER VALKOSKY: Thank you.

8 MR. HARRIS: A brief redirect.

9 REDIRECT EXAMINATION

10 BY MR. HARRIS:

11 Q Mr. Livingston, you're here to testify
12 on the subject of Geology; is that correct?

13 A Yes.

14 Q And you're not here to testify on the
15 construction of the facility and the geological
16 issues related to construction; is that correct as
17 well?

18 A Yes.

19 Q Thank you. The Piercy and the Bernal
20 Faults, did you say that those are not active
21 faults?

22 A Under current thinking, they are not
23 active. Yes.

24 Q And that's based on generally accepted
25 scientific methods --

1 A Yes.

2 Q -- methodologies approved by folks in
3 your profession?

4 A Yes.

5 MR. HARRIS: That's all I have.

6 HEARING OFFICER VALKOSKY: Okay.

7 Mr. Williams.

8 MR. WILLIAMS: A redirect on Mr. Harris'
9 question.

10 HEARING OFFICER VALKOSKY: A recross?

11 Yeah. It's got to be within --

12 MR. WILLIAMS: Yes.

13 HEARING OFFICER VALKOSKY: -- the scope
14 of the redirect.

15 RE CROSS EXAMINATION

16 BY MR. WILLIAMS:

17 Q Does that statement include -- do you
18 believe there are any consistencies between the
19 FEMA seismic maps and this map of CH2MHILL? Have
20 you consulted the FEMA maps that are referred --

21 MR. HARRIS: That -- that's not within
22 the scope --

23 MR. WILLIAMS: -- to on the next page.

24 MR. HARRIS: That's not within the scope
25 of my redirect. I'd object on that basis.

1 HEARING OFFICER VALKOSKY: The -- the --
2 well, okay.

3 MR. WILLIAMS: The redirect had to do
4 with --

5 HEARING OFFICER VALKOSKY: No, the
6 redirect was very discrete about the construction
7 experience.

8 MR. WILLIAMS: I -- I will accept no
9 answer to the question. I believe there is a
10 seismic issue here.

11 HEARING OFFICER VALKOSKY: Okay.
12 Anything else?

13 MR. HARRIS: I'd like to move the one
14 document into evidence, Document 19, the response
15 to the drainage and grading plan. This is the
16 only witness who will be testifying as to that
17 document.

18 HEARING OFFICER VALKOSKY: Okay. Is
19 there any objection to receiving Exhibit 19?

20 MR. KRAEMER: I would object as a
21 citizen. I'm --

22 HEARING OFFICER VALKOSKY: Sir, you
23 don't have standing to object.

24 MR. KRAEMER: I understand I have a
25 right to it, and I have specific knowledge about

1 the site.

2 HEARING OFFICER VALKOSKY: We will take
3 that as public comment, sir, after we're through
4 with this. Okay?

5 MR. KRAEMER: I would like to become --

6 HEARING OFFICER VALKOSKY: And as -- and
7 as before, if your questions are relevant, we'll
8 have the witness's answer, just as we did with Mr.
9 Abreu. Okay? Thank you.

10 Is there anything else on the area of
11 Geology?

12 Mr. Harris, did you intend to have Mr.
13 Lawler testify at this time, as well?

14 MR. HARRIS: I'd like to have him
15 testify -- well, actually, I'll defer to you. I
16 had forgotten Staff's witness, so however you'd
17 like to proceed.

18 HEARING OFFICER VALKOSKY: Staff's
19 witness deals with both of these topics, so unless
20 there's any objection from Staff, I'd just as soon
21 hear from Mr. Lawler, and then Staff's witness can
22 cover both of the topics.

23 MS. WILLIS: No objection.

24 MR. HARRIS: Okay. And we'll make them
25 available for cross examination, both of them. So

1 we'll go to Mr. Lawler.

2 Would you -- the witness has previously
3 been sworn.

4 TESTIMONY OF

5 DAVID LAWLER

6 called as a witness on behalf of the Applicant,
7 having been first duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HARRIS:

11 Q Would you state your name for the
12 record?

13 A David Lawler.

14 Q Thank you. And what subject matter
15 testimony are you here to sponsor today?

16 A Paleontological Resources.

17 Q And specifically, which documents are
18 you sponsoring as part of your testimony?

19 A Section 8.16 of the AFC, Appendix 8.16A
20 of the AFC, and Supplements A and C to the AFC.

21 MR. HARRIS: All those documents have
22 been previously marked. They are portions of the
23 AFC or the supplements thereto.

24 BY MR. HARRIS:

25 Q Do you have any change or corrections to

1 your testimony?

2 A No, I do not.

3 Q And were the documents prepared either
4 by you or at your direction?

5 A Yes.

6 Q And are the facts therein true, to the
7 best of your knowledge?

8 A Yes, they are.

9 Q Are the opinions stated therein your
10 own?

11 A They are.

12 Q And you adopt this as your testimony for
13 this proceeding?

14 A I do.

15 Q Will you briefly provide us with your
16 qualifications.

17 A I'm a Paleontologist with over 26 years
18 experience in the field. I have a Master's degree
19 from the University of California at Berkeley in
20 Paleontology.

21 Q And what's your current position?

22 A I am a principal of the Environmental
23 Geoscience firm, Lawler and Associates.

24 Q Thank you. Could you now please provide
25 us with a brief summary of your testimony?

1 A Yes. I -- I performed a -- what's
2 considered a standard Class 1 site record survey
3 for this project, whereby I conducted a
4 comprehensive survey of all the available
5 published scientific literature of a geological
6 and paleontological nature, in addition to visits
7 to some of the key designated museum repositories
8 here in California, to review site records,
9 locality information, and to examine fossil
10 specimens.

11 At that point, or subsequent to that, I
12 had visited the site, conducted a survey on foot
13 of the plant footprint area, as well as all plant
14 linears at that time. Examining the known or
15 existing outcrops for paleontological resources.
16 This was all compiled into a technical report
17 which was folded into the AFC, thereby with the --
18 on the basis of the amount of due diligence that
19 was required, this project does conform with all
20 laws, ordinances, and regulations required to
21 Paleontological Resources.

22 Q Now, have you had a chance to review the
23 Final Staff Assessment?

24 A Yes, I have.

25 Q And you've reviewed the Conditions of

1 Certification set forth therein?

2 A Yes.

3 Q And do you find them acceptable?

4 A I do.

5 MR. HARRIS: Okay. I make the witness
6 available for cross examination.

7 HEARING OFFICER VALKOSKY: Ms. Willis.

8 MS. WILLIS: No questions.

9 HEARING OFFICER VALKOSKY: Questions for
10 anyone from -- for Mr. Lawler, on Paleontological
11 Resources? I see none.

12 Thank you, sir.

13 Before we turn it over to Staff, Mr.
14 Livingston, I received a question which I think is
15 relevant, from a member of the audience. And
16 basically it's, has a geological assessment, or
17 does a geological assessment include areas outside
18 the plant site? And by this, I mean the routes of
19 the peripherals such as the pipeline, the
20 wastewater line, and things of that nature.

21 MR. LIVINGSTON: For the two linears,
22 yes.

23 HEARING OFFICER VALKOSKY: And in your
24 view, the two linears are?

25 MR. LIVINGSTON: The water line that's

1 going to -- that's going to carry treated
2 wastewater to the plant, and the gas line that
3 connects over to the --

4 HEARING OFFICER VALKOSKY: Okay. So you
5 -- you have reviewed the geological --

6 MR. LIVINGSTON: Yes.

7 HEARING OFFICER VALKOSKY: Thank you.

8 Okay. Is there anything further for
9 these witnesses?

10 I'd just like to advise the witnesses,
11 you're excused for now, but subject to recall
12 should a member of the public have a question that
13 is appropriate for you to answer. Okay. And
14 that'll happen right after we get through with
15 Staff's witness.

16 Ms. Willis.

17 MS. WILLIS: Staff would like to call
18 Robert Anderson.

19 HEARING OFFICER VALKOSKY: Would you
20 swear the witness, please.

21 (Thereupon Robert Anderson was,
22 by the reporter, sworn to tell the
23 truth, the whole truth, and nothing
24 but the truth.)

25 ///

1 TESTIMONY OF
2 ROBERT ANDERSON
3 called as a witness on behalf of Commission Staff,
4 having first been duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WILLIS:

8 Q Mr. Anderson, could you please tell us
9 what your job title is?

10 A I'm an Associate Engineering Geologist
11 with the Engineering Office of the California
12 Energy Commission.

13 Q And did you prepare the testimony
14 entitled Geology and Paleontology in the Final
15 Staff Assessment, marked Exhibit 7?

16 A I don't know what the exhibit number is,
17 but, yes, I did, in the FSA.

18 Q Was a statement of your qualifications
19 attached to this testimony? Was a statement of
20 your qualifications attached to this testimony?

21 A Yes, it was.

22 Q And could you briefly describe your
23 education and experience.

24 A Yes. I have a Bachelor's degree in
25 Geology, with emphasis in Engineering Geology and

1 Seismology from CSU Sacramento. I am a Registered
2 Geologist and a Certified Engineering Geologist
3 with the State.

4 Q Do you have any changes or corrections
5 to your testimony?

6 A No, I do not.

7 Q Do the opinions contained in your
8 testimony represent your best professional
9 judgment?

10 A Yes, they do.

11 Q There were several issues that have been
12 brought up by the public over -- during the last
13 year at public workshops, and also tonight. One
14 of the issues involved liquefaction. Could you
15 please tell us what liquefaction is, and is it a
16 concern in this project?

17 A Liquefaction is -- is a phenomena that
18 occurs during of intense poor water pressure
19 changes in soils. It could be either in cohesive
20 soils or in cohesionless soils. And this is an
21 event that might occur in this particular area for
22 this kind of project, such as Metcalf, would be
23 during a significant earthquake. A significant
24 earthquake in this case would have a ground
25 acceleration .4, .5, or higher ground

1 acceleration, would have near surface groundwater,
2 which this site does, and also be in the soils
3 that has a low penetration resistance, which means
4 it has a low count in usually under 20. That
5 doesn't mean it'll necessarily liquefy. It has
6 the potential to liquefy.

7 And what is the other part of the
8 question?

9 Q Is liquefaction a concern to you in this
10 project?

11 A It's only a concern in this particular
12 project as something to be looked at. What we
13 have are two ways of going about doing this.

14 The first way is this. It's that you
15 actually do a detailed liquefaction analysis by an
16 engineering team, such as CH2MHILL, or some other
17 group. Or, the other option is if, in the best
18 professional judgment of a geotechnical engineer
19 or a certified engineering geologist, they look at
20 the data that they have gathered or read. In this
21 case they already have a lot of soil points. And
22 if in their judgment says no, we'll hang our
23 shingle and say we don't have a liquefaction
24 problem here, then they would have to go to the
25 chief building official's office as part of the

1 engineering geologist's report, which is required
2 for a project like this, and submit it. And then
3 the CBO would review and either approve it or have
4 them modify it, or disapprove the report.

5 Q Mr. Boyd raised an issue of two faults
6 that were -- that were not identified in the Final
7 Staff Assessment, that Mr. Valkosky addressed
8 earlier with the witness from the Applicant.

9 Why were they not included in the FSA,
10 and are they active faults?

11 A Okay. I'll take the latter part of the
12 question first. Neither the Piercy nor the Bernal
13 Faults, or the Santa Clara Fault, which came up,
14 are active faults. And that's per California
15 Division of Mines and Geology's Jennings 1994.
16 That's a publication that comes out. Or get
17 information similar to what CH2MHILL had put into
18 the AFC. And that neither fault are considered
19 germane relative to site specific design criteria
20 for this site, inasmuch as the design event, or
21 designed earthquake event fault for this
22 particular project, in my view, is actually the
23 Monte Vista Shannon Fault, which is located about
24 a mile from the Metcalf Energy Center.

25 That's capable of producing between a

1 6.5 and a 7.0 magnitude event, and whereas there
2 is another question about the San Andreas, which
3 is much further away to the west, and it would
4 have a lower ground acceleration, as -- as Mr.
5 Livingston demonstrated here very well, that there
6 would be significant strong ground motion
7 attenuation occurring between the San Andreas
8 Fault and the site, so it'd drop off. The
9 acceleration would drop off.

10 Q Another issue that was raised is in
11 regards to release of water from the Coyote Dam
12 from a catastrophic fault rupture. Could you
13 please describe the scenario and its importance to
14 this project?

15 A The Coyote Dam was built in the mid-
16 1930's over an active fault, the Calaveras Fault.
17 It turns out that there's another reservoir
18 downstream from there, the Anderson Reservoir and
19 dam, and there has been a series of maps put out
20 for the Coyote drainage, the Coyote Creek
21 drainage, that indicates inundation for an area
22 around the Coyote Creek drainage and also the time
23 for inundation for the first part of the flood
24 waver from a catastrophic breaching of the Coyote
25 Dam and Reservoir. And that's only from the

1 Coyote Reservoir, not -- and Anderson Dam.

2 Turns out that for about -- at the
3 sites, about 8.3 miles downstream from where the
4 event would occur, you have about an hour 20
5 minutes time from the first part of the wave,
6 that's not the highest crest of the wave, that
7 would come through from flooding from a breaching
8 of the dam.

9 And what you'd have here is essentially
10 a hypothetical case where you have zero dam
11 remaining, and height of water, a wall of water
12 coming at you through the Coyote Creek drainage
13 that is spilling out into that, going down. So
14 you'd have inundation of the entire area around
15 Coyote Creek drainage possible. Doesn't mean it's
16 likely to happen, but in the map that had to be
17 generated -- that has been generated for this
18 site, that's what we're looking at. We're looking
19 at maybe five, ten foot of inundation of the fill
20 footprint at the power plant site water.

21 Q Mr. Anderson, we were just asked a
22 question regarding post-certification borings, and
23 whether the public has an opportunity to review
24 that information. Could you please address that?

25 A Yes. Turns out that the way this --

1 excuse me -- the Condition of Certifications are
2 written, is that it's under the review of the
3 chief building official's office. Now, as the
4 public would have access to the chief building
5 official's records once they're submitted to him,
6 her, then they would have that kind of
7 availability to them. Plus, it'd be closer than
8 Sacramento, where our offices are located.

9 In this particular Condition of
10 Certification, it's written in such a way that if
11 the CEC Staff asks, via the Compliance Project
12 Manager, for a copy of the engineering geology
13 report, is when we would get such a report.
14 Otherwise, we would not necessarily get the report
15 unless the Applicant, of their own interest,
16 decided to send us a copy anyway.

17 So in order for the public to get a
18 copy, the best way to go would be through the CBO,
19 or if we actually had a copy, had requested one
20 from the CBO and from the Applicant, then they
21 could look at ours down in the dockets room, as
22 they go through the Freedom of Information Act to
23 look at our documents.

24 Q Were there any other issues or concerns
25 you wanted to address under Geology, before I move

1 on to Paleo?

2 A There was a question that came from Mr.
3 Boyd earlier, about -- let's see what it was --
4 subduction and trust faults. Turns out to be
5 there's no subductions anywhere in this part of
6 the state that's known at this time. There is a
7 subductions out of the -- at the Mendocino triple
8 junction, which is off of Point Mendocino, in
9 Humboldt County, off -- offshore there. And that
10 goes towards the Klamath Mountain Range,
11 underneath the Klamath Mountain Range.

12 Also, there -- I'd like to share a
13 correction here, where that the Northridge
14 earthquake fault that is associated with that
15 particular event back in 1994, was unknown. That
16 is not true, nor it is an area of subduction.
17 Turns out that particular fault, the Oakridge
18 Fault, was known to the petroleum industry that
19 had been exploring in that area for the
20 development of oil, which is prevalent in the Los
21 Angeles Basin. Turns out that was proprietary
22 information, so it wouldn't be common knowledge
23 that it was a known fault.

24 And also in that area, there is no
25 subduction mechanism that's currently known for

1 that area.

2 Q Thank you. Moving on to the next topic,
3 are there any issues of concern regarding
4 Paleontology Resources?

5 A No.

6 MS. WILLIS: This witness is available
7 for cross examination, and we would like to move
8 the section Geology and Paleontology into the
9 record.

10 HEARING OFFICER VALKOSKY: And I take it
11 that's pages 573 through 587; is that correct?

12 MS. WILLIS: That's correct.

13 HEARING OFFICER VALKOSKY: All right.
14 Is there objection to that -- admitting that
15 portion of Exhibit 7?

16 Mr. Wade.

17 MR. WADE: I'd like to ask the witness a
18 --

19 HEARING OFFICER VALKOSKY: Okay. But
20 I'm --

21 MS. WILLIS: We're just --

22 HEARING OFFICER VALKOSKY: Right now I
23 want to know if there's an objection to Ms. Willis
24 moving in the Staff testimony.

25 MR. WADE: No objection.

1 HEARING OFFICER VALKOSKY: Okay, there
2 is no objection. That's admitted.

3 (Thereupon the Geology and
4 Paleontology Section of
5 Exhibit 7 was received into
6 evidence.)

7 HEARING OFFICER VALKOSKY: Cross
8 examination, Mr. Harris?

9 MR. HARRIS: Yes, just a few questions
10 for Mr. Anderson.

11 CROSS EXAMINATION

12 BY MR. HARRIS:

13 Q This project, you had a chance to
14 analyze all the applicable LORS, the laws,
15 ordinances, regulations and standards; is that
16 correct?

17 A Yes.

18 Q And do you find that this project is in
19 conformance with all those applicable LORS?

20 A If it's designed and built according to
21 the Conditions of Certification that we've
22 proposed here, it should be in conformance with
23 the LORS.

24 A And that --

25 A For Geology and Paleo.

1 Q And that determination takes into
2 consideration all the issues we've been
3 discussing, such as liquefaction --

4 A Sure.

5 Q -- the issues related to the dams, and
6 all those other issues that you discussed today?

7 A Yes.

8 MR. HARRIS: Okay. I think that's all I
9 have right now. Thank you.

10 HEARING OFFICER VALKOSKY: Okay. Mr.
11 Wade.

12 MR. WADE: Thank you.

13 CROSS EXAMINATION

14 BY MR. WADE:

15 Q Mr. Anderson, I believe I heard you say
16 that Shannon Fault was a potential for -- or had
17 the potential for a -- a seismic event. Is that
18 -- is that correct?

19 A Yes.

20 Q And could you go into a little bit more
21 detail as to why you believe Shannon is -- is the
22 logical source of a seismic event?

23 A Yes. It turns out to be we're looking
24 at two different kinds of events, essentially. A
25 near -- a near field event, and a far field event.

1 And we're right on the cusp of having a fault and
2 actually being a near field event. Whereas the
3 near -- near field event would be the Monte Vista
4 Shannon earthquake, should it ever occur, with a
5 moment magnitude between 6.5 and a moment
6 magnitude of 7.0, about a one mile from the site.
7 Okay. Hence, near field event. Okay. We're very
8 close to it.

9 And that's also called a Type B fault,
10 according to an international conference of
11 building officials, and they put out a publication
12 that actually lists the Shannon Fault component as
13 a 6.5, hence the range 6.5 to 7, when you put in
14 the Monte Vista component onto it.

15 Turns out to be the San Andreas Fault in
16 that area is capable of a 7.9 event. Okay. And
17 it's ten miles to the west, but it's a right
18 lineal fault, which basically means one thing, is
19 that the directivity of the seismic energy along
20 the fault is generally along the direction of the
21 strike of the fault. Which means the direction of
22 the fault itself, i.e, northwest, or southeast,
23 whichever way it propagates, or it can propagate
24 both ways, as -- as sometimes earthquakes on the
25 San Andreas does.

1 But what that means is you have less
2 amount of energy radiated laterally, i.e., towards
3 Metcalf, or to the west, or whatever's west of San
4 Andreas. So you would have a less amount of
5 energy in the first place on that particular
6 event. That's why I'm looking at the Shannon
7 being only one mile away, good size event, and not
8 having the directional problem that you would have
9 naturally associated, normally associated with a
10 right lateral strike -- on the San Andreas.

11 Q I think I understand a part of that.
12 And --

13 A Ask away.

14 Q I wonder if you could tell me what the
15 approximate age of that -- that fault is. The
16 Shannon Fault.

17 A That particular fault -- I'll look up
18 here on our map -- is an older fault, and that
19 would be 700,000 years. Now, if we come back to
20 what Mr. Livingston said, what we're looking at as
21 a design value, we could have here, you'd be
22 looking at the San Andreas. So it's really a push
23 in what you're using. What are we looking at for
24 ground acceleration? We're still looking around
25 .5 G. What do we really look at? We look at the

1 response time history, we look at the ground
2 acceleration, we look at the duration of strong
3 ground shaking.

4 All that would come out of the Phase 2
5 engineering geologic geotechnical engineering
6 report to be done, should the project be
7 certified.

8 Q So --

9 A In other words, they may change -- they
10 may go with the other fault, just because it's
11 more active.

12 Q So, if I understand your -- your
13 statement, the Shannon Fault is of the same age as
14 the Piercy and Bernal Fault; is that right?

15 A That's what this map -- but if you
16 actually look at different documentation, it's
17 contra-wise to that. So if you look at it either
18 way, you know. I would look at it actually as
19 being something I would -- I would judge both
20 events. I have a smaller event, a moment
21 magnitude, a whole number of difference is a power
22 -- energy difference of 31. Okay. It's a square
23 root of a thousand difference between the two.

24 So if you have a 7-9 and a 7, a 7-9 is
25 much larger event than a 7. Okay. So what I

1 would look at is I would at both events, and then
2 have to make a decision, if I were on a design
3 team, to say which one would I use, which is more
4 likely to occur during the lifetime of my project,
5 it may turn out that they're very close, and in
6 that case we might use the San Andreas. Or it may
7 turn out that there's an issue that the design
8 team wants to use the Shannon Fault. That's their
9 call.

10 Q And so do I -- am I correct to
11 understand that you participated in this decision
12 as to which faults to use in the design analysis,
13 or did you not participate in this -- in this
14 decision?

15 A I didn't participate with them. What I
16 did is an independent assessment. So if they're
17 looking at a different event, God bless them, as
18 long as they got the wherewithal to back it up.
19 This way we look at something, we get similar
20 numbers for similar kinds of durations. So what's
21 going to happen to the site? Similar kind of
22 effect on the site. What does that mean to your
23 design? You have similar kind of design criteria
24 that the engineering team's going to need to
25 develop a site that will satisfy the safety

1 requirements under the UBC and CBC.

2 Q So this -- this analysis that you're
3 alluding to will take place in the future?

4 A Should the site get certified.

5 Q And what form will that information
6 take? Will it be in -- subject to public review?
7 Is it going to be provided in some form of
8 documentation?

9 A Not public review, no. What it is is
10 the CBO has the review authority over that. So
11 what'll happen is the CBO's office will have an
12 engineer assigned to that, and what they'll do is
13 then using the current accepted review protocols
14 for that kind of report, they'll review it
15 independently of what we're doing and say this is
16 a good report, this needs some modification here
17 and there, or we can't accept this for cause.
18 They'll have to explain that to the authors of the
19 report what the problems were.

20 But if they accept it, then that's the
21 design criteria the engineering team will need to
22 develop the foundation elements, the piles, that
23 foundation, whatever, for this particular project.

24 MR. WADE: I see. Okay. I have no
25 further questions.

1 PRESIDING MEMBER LAURIE: Now, for
2 purposes of the record, Mr. Valkosky, Mr.
3 Anderson, you have made reference to comments made
4 by the Applicant's witness. You made reference to
5 Mr. Levinson.

6 THE WITNESS: Uh-huh.

7 PRESIDING MEMBER LAURIE: His name is
8 Mr. Livingston. Is that the person --

9 THE WITNESS: Livingston?

10 PRESIDING MEMBER LAURIE: Livingston is
11 the --

12 THE WITNESS: The gentleman that was
13 just here.

14 PRESIDING MEMBER LAURIE: Yes. So all
15 your references to Mr. Levinson should be
16 references to Mr. Livingston. Is that correct?

17 THE WITNESS: I must've misspoke. It's
18 Mr. Livingston, the gentleman that was just here.

19 PRESIDING MEMBER LAURIE: Fine. Thank
20 you, sir.

21 HEARING OFFICER VALKOSKY: Okay. One
22 second, sir. Let me finish the cross examination.
23 Okay?

24 All right. Again, Mr. Williams.

25 MR. WILLIAMS: Thank you, sir.

1 HEARING OFFICER VALKOSKY: Make it
2 brief.

3 MR. WILLIAMS: I'll make it brief.

4 HEARING OFFICER VALKOSKY: Please.

5 MR. WILLIAMS: In my previous assignment
6 I sat through 15 years of hearings on the Yucca
7 Mountain project, which included a lot of seismic
8 issues, so though I don't hold a degree in
9 geology, I've heard a lot of geology --

10 HEARING OFFICER VALKOSKY: Mr. Williams,
11 please, just ask -- ask your questions.

12 MR. WILLIAMS: Oh, I --

13 HEARING OFFICER VALKOSKY: Shoot.

14 CROSS EXAMINATION

15 BY MR. WILLIAMS:

16 Q Does the length of a fault bear a
17 relationship to the size of the earthquake that
18 might be thought to occur on the fault?

19 A Yes, it does. Yes, it does.

20 Q Yes, I thought that it did. So if the
21 Santa Clara Fault were found to be part of the
22 Piery Fault, would not that extend the length of
23 the Santa Clara Fault and therefore make it
24 capable of higher earthquake force?

25 A Let's get something straight right now.

1 They are two different faults.

2 Q Now --

3 A Because they're two different faults.
4 But if you had a family of faults where it showed
5 that they were related to one another, two things
6 could happen. You could have breakage along a
7 piece of a fault. That's what happened over in
8 Turkey. In fact, in 1999 only a portion of the
9 North Anatolian Fault broke, or 1906, San Andreas,
10 we only had a portion of San Andreas break. A big
11 one. It was only a portion. So the earthquake
12 was smaller.

13 If we had the entire fault system
14 rupture at once, you'd have a larger earthquake.
15 But they don't necessarily mean that you get
16 necessarily the larger one, especially on a highly
17 fractured system, because there's areas where you
18 can relieve the stress from piece to piece, or
19 have it migrate from one piece and then build up
20 and later have a -- a smaller earthquake than the
21 maximum earthquake in the system at a later date.

22 Q Is it your testimony, then, looking at
23 Figure 8.15-2, and I have a colored copy here if
24 you'd like --

25 A I'd --

1 Q Here you go. In your mind, it's not
2 credible that trenching studies might reveal that
3 the Santa Clara Fault and the Piercy Fault are a
4 single expression of a geologic phenomena?

5 A They're not the same.

6 Q Okay. I take that to be your testimony.
7 Thank you.

8 A Yes.

9 Q Now, directing your attention to page
10 576, at the top, where I was asking questions
11 earlier.

12 A Can I have just a second? I'll flip the
13 -- okay.

14 Q Do you believe it's possible for the
15 surface water -- excuse me, the groundwater to be
16 closer to the surface than 12 feet?

17 A Sure. It -- it depends on the season,
18 the rainy season they get, and the rate of
19 recharge and discharge of the area.

20 Q Was --

21 A That was just at one point in time.

22 Q Why does your -- could you explain why
23 the FSA restricts this -- the statements here to
24 12 feet?

25 A Because at the time that we had boring

1 data for it, back in April of 1999, that was
2 groundwater elevation that was indicated in the
3 boring logs.

4 Q Do you believe the groundwater could be
5 closer to the surface than that?

6 A Yes, and it makes no difference relative
7 to the liquefaction study.

8 Q That's where I was leading. Thank you
9 for commenting to that extent.

10 Now, do you believe that pilings will be
11 required in any locations on the site because of
12 the groundwater proximity to the surface, and the
13 potential for liquefaction?

14 A I'm not going to comment on that,
15 because we need to have the Phase 2 geotechnical
16 investigation done first to be fair to that
17 question. Once that report's in, then the design
18 team will make a assessment, recommendation,
19 probably in that report, general recommendations
20 as to foundation elements. Then the design team
21 for the owner will go out there and actually
22 design the foundation elements.

23 So what I'm saying is I can sympathize
24 where you're going, but it's too early, without
25 those 20 extra borings, to see where we're at.

1 Q Well, that's precisely my concern. Now,
2 will that -- obtaining those borings and reaching
3 the conclusion be a condition of -- a pre-
4 construction condition of compliance? Were you
5 here during Mr. Munro's testimony?

6 A Can you say that again? I have a hard
7 time hearing you.

8 Q I'm sorry. A pre-construction condition
9 of compliance. In other words, my understanding
10 is that there are certain conditions that must be
11 met before construction begins.

12 A Right.

13 Q Is one of those conditions completing
14 the seismic characterization by conducting those
15 fault borings?

16 A It -- it's the geotechnical
17 investigation, engineering geologic report is a
18 condition of the certification of this, and it is
19 required before they can do foundation work.

20 Q Is it a pre-construction condition of
21 certification?

22 A Yes.

23 Q Okay. Thank you.

24 Could you describe where the natural gas
25 pipeline is with respect to the Piercy Fault?

1 A Okay. If we look at -- I thought this
2 had a figure number on it --

3 Q 8.15-2.

4 A Thank you. If you look at the map here,
5 it indicates that first of all, the site itself
6 needs to be moved, translated, if you will, on the
7 graphic slightly to the northwest to actually be
8 located into the area right next to Tulare Hill.
9 With that in mind, it appears that the gas line
10 does, in fact, cross the projection of the Piercy
11 Fault. What that is, though, that's an inactive
12 fault, and we build over inactive faults every day
13 of the week.

14 There are protocols developed by the gas
15 industry, by the construction industry, on how to
16 deal with that, and also in strong ground shaking
17 relative to that, so we have deformation, as well
18 as rupture that we can handle with current
19 American Lifelines Alliance Pipe, and Department
20 of Transportation, Officer of Power Plant Safety
21 protocols for gas systems. This is not a problem.

22 Q Would you consider it to be prudent to
23 have a seismically activated shut-off valve for
24 the main gas line into the project because of the
25 vulnerability to earthquakes?

1 MR. HARRIS: I'm going to object on the
2 basis that's a Facility Design question.

3 HEARING OFFICER VALKOSKY: Okay. The
4 witness capable of answering that? Or, if not,
5 we'll defer it to Facility Design.

6 THE WITNESS: We'll defer it to Facility
7 Design because that's --

8 HEARING OFFICER VALKOSKY: Okay.

9 MR. WILLIAMS: And Mr. Baker is here
10 tonight, is that correct?

11 HEARING OFFICER VALKOSKY: Mr. Baker is
12 here tonight, Mr. Williams. How much more do you
13 have on this, sir?

14 MR. WILLIAMS: I -- I think I --

15 HEARING OFFICER VALKOSKY: Okay.

16 MR. WILLIAMS: -- will have flogged that
17 horse sufficiently.

18 (Laughter.)

19 MR. AJLOUNY: Mine should be very quick.

20 HEARING OFFICER VALKOSKY: Okay.

21 CROSS EXAMINATION

22 BY MR. AJLOUNY:

23 Q You mentioned the Shannon Fault, if I
24 heard you right, was not the same age as the
25 Bernal and Piercy Faults. On this document, it

1 shows it to be pretty much the same timeframe.

2 But you mentioned some other document you used --

3 A Right. There is another document that's
4 a 1998 document, that indicates that the Shannon
5 component of the Monte Vista Shannon Fault complex
6 is active. It's what they call a Type B Fault.
7 But for this particular project, what does that
8 really mean? All it really means is that's
9 something to take in to the design team as a
10 consideration. It does not cross the footprint.
11 There are no faults that cross the footprint of
12 the power plant.

13 There may be some inactive faults,
14 according to this, that do cross the lineation, or
15 the linear facilities.

16 Q Okay.

17 A That can be easily handled.

18 Q But the point is, the age is pretty much
19 the same, but just Shannon happens to be active
20 and the other two are inactive. Is that what I'm
21 understanding?

22 A That is if, in fact, the International
23 Building Code officials, which is a world-renowned
24 group, got it right.

25 Q And you feel they probably got it right.

1 I mean, that's what you're --

2 A More than likely.

3 Q -- basing your --

4 A And either way, it's -- it's still easy
5 enough to design around.

6 Q Okay. The only point I want to make is
7 that the Bernal Fault and the -- along with the
8 Santa Clara, if you go along with the theory of
9 being in line of direction, you know, you said
10 when a fault happens and, you know, if it -- when
11 it shakes it goes straight ahead, it would be
12 right in line with the Metcalf project, especially
13 if you move it northwest, like you mentioned. It
14 would put it right in the -- the line of fire, I
15 guess I would put it, with the different faults,
16 Santa Clara Fault, the Bernal Fault, but -- so
17 that -- that's the point. Would that be a concern
18 of yours?

19 HEARING OFFICER VALKOSKY: Is there a
20 question?

21 BY MR. AJLOUNY:

22 Q Well, would that be a concern?

23 A I -- can you repeat it, maybe?

24 HEARING OFFICER VALKOSKY: All right.

25 Is there any -- is --

1 THE WITNESS: I don't know the question.

2 HEARING OFFICER VALKOSKY: Okay. Just

3 -- Mr. Livingston, do you have any idea --

4 MR. LIVINGSTON: Yes. Around the Piercy
5 and Bernal Faults, there is -- you can never say
6 never in this business.

7 MR. AJLOUNY: Okay.

8 THE WITNESS: There is, in my opinion it
9 would not be cause for changing any kind of the
10 design or the alignments of the lineations, or
11 where the footprint is of the site, with respect
12 to the Piercy Fault or the Bernal Fault, as we
13 currently know them.

14 Does that answer your question? Or can
15 I clarify it for you.

16 HEARING OFFICER VALKOSKY: In -- so in
17 your professional judgment, is there any reason to
18 do further analysis of either of those faults?

19 THE WITNESS: Those two particular
20 faults, the Bernal and Piercy Faults?

21 HEARING OFFICER VALKOSKY: Yes.

22 THE WITNESS: No.

23 HEARING OFFICER VALKOSKY: Thank you.

24 Okay. Anything else? Any redirect?

25 MS. WILLIS: No redirect.

1 HEARING OFFICER VALKOSKY: All right.

2 Mr. Anderson, thank you, and you'll be
3 subject to recall should anything from the members
4 of the public.

5 Sir, Mr. Kraemer, if you could go the
6 podium, please.

7 MR. HARRIS: Mr. Valkosky, a quick
8 question. Do you need our Paleo and Cultural --
9 doing it again -- Paleo and Geo witnesses to hang
10 out for a while, or --

11 HEARING OFFICER VALKOSKY: We'll know in
12 a second.

13 MR. HARRIS: Okay. Oh, I see, as soon
14 as Public Comment -- okay, because they're antsy
15 right now.

16 HEARING OFFICER VALKOSKY: No, that's --

17 MR. KRAEMER: Yes, Oliver Kraemer.

18 I would like to explain a little bit --

19 HEARING OFFICER VALKOSKY: Excuse me,
20 Mr. Kraemer.

21 Mr. Williams, please sit down.

22 Mr. Kraemer.

23 MR. KRAEMER: I would like to explain a
24 little bit about the nature of my brain damage and
25 resultant difficulties I have. Although I'm more

1 articulate, I've lost the -- much of the use of
2 the written language to be able to conceive it,
3 and put it down on paper, and reconceive it once
4 it's off there. So it's -- I have to try to
5 remember everything that's happened. With -- with
6 the number of witnesses, and my ability to take
7 and keep all of those straight in my head, and
8 then ask the appropriate questions later, it is --
9 it's -- I'm not able to operate as well as I'd
10 like to in that situation. It would help me to be
11 able to do it closer after the testimony, if I
12 might.

13 Thank you.

14 HEARING OFFICER VALKOSKY: Okay. Do you
15 have any question on the Geology or Paleontology?

16 MR. KRAEMER: Yeah, I do.

17 HEARING OFFICER VALKOSKY: Okay. You
18 can ask them.

19 MR. KRAEMER: Yes. Regarding Geology,
20 you had indicated that there's a difference in
21 severity from the distance of the fault. Are you
22 familiar with the PS and -- P and S waves that
23 originate from the focal point of a fault?

24 HEARING OFFICER VALKOSKY: Mr. Harris,
25 could you have Mr. Livingston respond to that?

1 MR. HARRIS: Or if Mr. Anderson wants to
2 join him, I wouldn't --

3 HEARING OFFICER VALKOSKY: Yeah, that's
4 probably better. Mr. Anderson, why don't you
5 gentlemen get up as a panel.

6 MR. LIVINGSTON: John Livingston. Yes,
7 I am familiar with the P waves and S waves from
8 earthquakes.

9 MR. KRAEMER: And do they travel at
10 different speeds?

11 MR. LIVINGSTON: Yes.

12 MR. KRAEMER: And the L wave which is
13 generated subsequent to those P and S waves, does
14 it travel at a different speed?

15 MR. LIVINGSTON: Yes.

16 MR. KRAEMER: And because of that, do
17 they arrive at points at different times and could
18 the conjunction of those waves resulting in much
19 higher impact than what would be expected from --
20 than would have one believe, because it is a
21 distance from the fault, and be another factor in
22 here that there can be an unexpected large impact,
23 larger than would be represented here as mollified
24 because of the distance from the fault?

25 MR. LIVINGSTON: The waves each arrive

1 at the site at a different point in time. And the
2 final geotech exploration will include the -- the
3 final analysis of the impact of earthquake shaking
4 on the ground at the site.

5 MR. KRAEMER: Including the harmonics
6 involved?

7 MR. LIVINGSTON: I don't know what you
8 mean by the harmonics involved.

9 MR. KRAEMER: Because both P, S, and L
10 waves all travel at different speeds, that at
11 different distances they will theoretically
12 conjoin and could be -- either subtract from the
13 impact at that area, or could greatly increase the
14 acceleration at that area.

15 MR. ANDERSON: I'd like to take -- this
16 is Bob Anderson. Turns out to be that's not a
17 very realistic scenario. Basically, what happens
18 instead sometimes, though, is you'll get an inner
19 basin effects where you have oscillations of P and
20 S waves, where either one of those two waves will
21 interfere with another one if it's kindred, if you
22 will, a P wave with a P wave, and they can amplify
23 or they can de-amplify, depending upon the actual
24 nodal points of those waves as they interfere with
25 one another.

1 If they interfere together, in -- in
2 sequence with one another, you have amplification,
3 you have increased energy right there. But if
4 they're out of phase with one another, they cancel
5 each other partly out.

6 MR. LIVINGSTON: Right.

7 MR. ANDERSON: But the -- the conjoining
8 of, if you will, of the P wave, the S wave, the L
9 wave, that is -- that is not a problem. That is
10 -- that is not something that tends to increase
11 strong ground shaking. And the CBC does require a
12 site response analysis, and there are fairly
13 reasonable techniques to be able to develop a site
14 response for a particular site. Depends on the
15 period of the site.

16 MR. KRAEMER: I see. Are you familiar
17 with the -- be it a technical, or maybe a jargon
18 term, of "knockers"?

19 MR. ANDERSON: Yes.

20 MR. KRAEMER: And could you explain the
21 movement of knockers, and whether this particular
22 site has a potential for those?

23 MR. ANDERSON: Sure. Knocker is where
24 you have an outcrop of rock that's either old
25 erosional feature that's remained in place, or it

1 is an area that was penetrated up from another sub
2 straight. And what you have here is areas where
3 they all -- they could have a different period
4 because they have a different elevation relative
5 to the -- the ground surface, where you have
6 different wave interference patterns with the
7 surface of the earth, relative to the elevations
8 for a particular structure.

9 If you think of a hill as a structure,
10 for just a second, a knocker, as a structure,
11 turns out you can get ridgetop shattering in
12 certain kinds of elements like that, which I
13 observed actually with the Northridge Earthquake
14 down in the Santa Susana Mountains. Turns out
15 that that's not very typical, and what happens
16 there is when you have the waves actually merge
17 with one another, they shatter the soil, looks
18 like somebody disked it without a disk, and flips
19 over part of the soil mass locally. But that is
20 very rare.

21 HEARING OFFICER VALKOSKY: Once more,
22 Mr. Kraemer, do you have any comments you'd like
23 to offer on this?

24 MR. KRAEMER: Well, I have another
25 question on that. Even aware --

1 HEARING OFFICER VALKOSKY: Last one.

2 MR. KRAEMER: -- whether this site has
3 knockers?

4 MR. ANDERSON: From what I recall of my
5 visit back in February of 1999 to the site, and
6 I'm going to defer to Mr. Livingston to -- with
7 this, I did not observe any particular knockers
8 there at the site.

9 MR. KRAEMER: Thank you. And you spoke
10 of groundwater. Would that include what all --
11 sometimes year-round spring? Did you observe a --

12 MR. ANDERSON: Say your question again,
13 please?

14 MR. KRAEMER: Did you observe a artesian
15 spring on that property?

16 MR. ANDERSON: There was a spring. Yes.

17 MR. KRAEMER: All right. You -- you did
18 not observe -- you observed only one spring?

19 MR. ANDERSON: Just saw one spring.

20 MR. KRAEMER: Okay. And also, you
21 referred to different borings. Are you aware that
22 a past owner, which was Granite Rock Construction,
23 did a number of bores to evaluate the hill for
24 uses for construction rock?

25 MR. ANDERSON: Was I aware that there

1 are other borings in that particular site?

2 MR. KRAEMER: Yes.

3 MR. ANDERSON: No.

4 MR. KRAEMER: Well, would they be --

5 HEARING OFFICER VALKOSKY: Mr. Kraemer,
6 I -- you know, you -- you're entitled to make your
7 public comment on this, and I frankly don't see
8 where you're going with a lot of these questions.
9 The witnesses have testified. We're willing to
10 give you, again, some reasonable latitude to get
11 your questions answered. If you've got any
12 concerns about the sufficiency of the analysis or
13 something, I'd appreciate your getting right to
14 it.

15 MR. KRAEMER: I'll do the best I can on
16 that. Which would be that would those other
17 borings be information that would be helpful to
18 you in making your analysis?

19 MR. LIVINGSTON: I'm not aware -- this
20 is John Livingston -- I'm not aware of the borings
21 that were done, if -- if they were, up on Tulare
22 Hill, but I'm sure that the design people would
23 appreciate any additional information they can
24 get.

25 MR. KRAEMER: All right. The presence

1 of springs -- may I address the Paleontologic --
2 first of all, the presence of springs, if they
3 exist now, would it be -- I would guess it'd be
4 dependent a lot on the geology of the area?

5 MR. ANDERSON: Especially local geology.

6 MR. KRAEMER: And that would be long-
7 standing. So if it exists now, it would've
8 probably existed in the past?

9 MR. ANDERSON: Not necessarily.

10 MR. KRAEMER: Okay. Is there often
11 association, if you can answer this, within the --
12 this area of paleontologic -- other civilizations
13 being near a springs for their existence?

14 MR. ANDERSON: That's outside the
15 purview of Paleontology. That's a cultural --

16 HEARING OFFICER VALKOSKY: That's
17 getting into Cultural Resources. Paleontology is
18 basically old bones and things.

19 MR. KRAEMER: I would've guessed old
20 bones came from old people who would've --

21 HEARING OFFICER VALKOSKY: Much, much
22 older.

23 MR. KRAEMER: Yes.

24 HEARING OFFICER VALKOSKY: Pre-human.

25 MR. KRAEMER: If there were old bones on

1 that property -- well, I don't think that's --
2 restate it.

3 The time that the geology would've been
4 placed to take and produce these springs, might
5 there be a society that was so old, but still
6 those springs were -- very old, but those springs
7 could -- could've still been there at that time,
8 geologically speaking?

9 MR. ANDERSON: I won't address the
10 question about a society, but you can have fossil
11 deposits around springs. Comes to pass that there
12 are some springs with significant fossil deposits
13 at -- in California that have been around since
14 the Pleistocene. But that doesn't necessarily
15 mean that your spring is anywhere near that old.

16 MR. KRAEMER: Thank you very much. I
17 have no further.

18 HEARING OFFICER VALKOSKY: Thank you,
19 sir.

20 Ma'am.

21 MS. WONG: Yeah. Can I ask one --

22 HEARING OFFICER VALKOSKY: If you could
23 go up to the microphone and identify yourself,
24 spell your last name, please.

25 MS. WONG: I'm Suzanna Wong, my last

1 name spelled W-o-n-g.

2 I want to ask Mr. Anderson, just now you
3 mentioned about, you know, you consider certain
4 events, geological events, to be very rare. What
5 chance do you take as very rare?

6 MR. ANDERSON: The question is you want
7 basically a probability of occurrence --

8 MS. WONG: Yes.

9 MR. ANDERSON: -- for an event such as
10 ridgetop shattering, or something?

11 MS. WONG: Yeah.

12 MR. ANDERSON: The knockers --

13 MS. WONG: Well, yeah, you consider, you
14 know, certain things are irrelevant because, you
15 know not significant because it's very rare. And
16 I want to know what cutoff probability you're
17 using as very rare.

18 MR. ANDERSON: The -- the assessment of
19 ridgetop shattering is a very singular and site
20 specific analysis. And it's typically not done
21 because it's such a rare event to occur. I would
22 not put a percentage or a probabilistic value,
23 say, one in ten to the minus sixth on such an
24 event. It would not be reasonable, it would not
25 be a prudent way to look at it.

1 What I would look at is the base of
2 analysis that's currently being done by the United
3 States Geological Survey over the next several
4 years, and this has nothing to do with this
5 project, then. What we're looking at is as a
6 regional picture, as what we can expect for basin
7 response analysis for that region of the basin,
8 the Coyote Basin. The Greater Santa Clara Basin.

9 Can you hear me with this?

10 Okay. So with that in mind, until that
11 data comes to pass several years hence from now,
12 and it's been peer reviewed and it's been kicked
13 around the floor a little bit, there's -- there's
14 no reason, first of all, to do it in the first
15 place, but there's no methodology to do it without
16 that data from the basin analysis for the Coyote
17 Basin, that won't come for a number of years yet
18 to come.

19 So I can't give you a percentage. I
20 can't give you a one in ten to minus six, one in
21 ten to minus four.

22 MS. WONG: Okay. I do have another
23 question, and that is, given that dams can break,
24 you know, because the construction may be built
25 to, you know, prevent, you know, five year flood

1 or things like that, and the bridges fall, you
2 know, the -- the highway in the event in 1989, you
3 know, the bridge break unexpectedly. And I'm sure
4 at the time of the construction they are built to
5 standard by the law. But it did happen.

6 And -- and so there is a certain seismic
7 event to which, if it occurs, it will break
8 anything to the level that you are constructing.
9 And so as a resident that's so close by this
10 facility, how can I feel comfortable about living
11 in my home?

12 MR. ANDERSON: That is a question for
13 Mr. Livingston, since it seems to be more based
14 about the design and construction, and I would --
15 I would defer to you. If you defer it back to me,
16 I'll take it, but --

17 MR. LIVINGSTON: I'm not -- I'm not sure
18 that --

19 MR. HARRIS: That wasn't a question,
20 that was a statement.

21 HEARING OFFICER VALKOSKY: Okay. That's
22 -- Mr. Harris is correct.

23 MR. HARRIS: Thank you for that
24 clarification.

25 HEARING OFFICER VALKOSKY: All right.

1 With that, unless there's anything else that's
2 relevant, we'll move off the topics of Geology and
3 Paleontology.

4 All right. Okay. With that, we'll
5 close the record on Geology and Paleontological
6 Resources. I thank the witnesses for being here.
7 You're excused.

8 The next topic on the agenda is
9 Transmission Line Safety and Nuisance.

10 At the Prehearing Conference, Mr. Boyd
11 was the only one who indicated he wished to have
12 witnesses present to cross examine, and I
13 understand that Mr. Boyd has since withdrawn that
14 request. Is that correct, Mr. Richins?

15 MR. RICHINS: Yes, that's correct.

16 HEARING OFFICER VALKOSKY: As a result,
17 at least Staff does not have a witness present on
18 this topic. Does Applicant, Mr. Harris?

19 MR. HARRIS: Yes, we do, but --

20 HEARING OFFICER VALKOSKY: Okay.

21 MR. HARRIS: -- if everyone -- take this
22 by stipulation.

23 HEARING OFFICER VALKOSKY: All right.

24 Is there any objection to taking the testimony on
25 this topic by stipulation?

1 Mr. Garbett.

2 MR. GARBETT: The only --

3 HEARING OFFICER VALKOSKY: Speak into
4 the microphone, please.

5 MR. GARBETT: William Garbett, speaking
6 on behalf of the public. Only a couple of
7 questions that I would like to have clarified on
8 that.

9 HEARING OFFICER VALKOSKY: Well -- no,
10 do you have questions on Transmission Line Safety
11 and Nuisance, specifically?

12 MR. GARBETT: Yes.

13 HEARING OFFICER VALKOSKY: Why didn't
14 you indicate at the Prehearing Conference you
15 wanted --

16 MR. GARBETT: Because --

17 HEARING OFFICER VALKOSKY: -- to cross
18 examine so we could possibly have witnesses
19 present?

20 MR. GARBETT: -- Mr. Valkosky did not
21 recognize me at the table, only after the hearing
22 was concluded in December did you even recognize
23 me as a member of the public.

24 HEARING OFFICER VALKOSKY: Did you file
25 a Prehearing Conference statement, sir?

1 MR. GARBETT: I did not file Prehearing
2 Conference statement, as I feel that you still
3 aren't quite ready to be going into Evidentiary
4 Hearings.

5 HEARING OFFICER VALKOSKY: Sir, I
6 understand your position, but that's not the
7 position that has prevailed.

8 Okay. If you have some questions, I
9 suggest you will have to limit them to Mr. Harris'
10 witness.

11 PRESIDING MEMBER LAURIE: Mr. Valkosky,
12 I want to know what those questions are --

13 MR. GARBETT: I just --

14 PRESIDING MEMBER LAURIE: -- otherwise,
15 we're going to do this through stipulation and
16 declaration, as we had previously ordered. What
17 are your questions?

18 MR. GARBETT: Can I just present those
19 questions to you, and then you can ask those
20 questions for me?

21 PRESIDING MEMBER LAURIE: Give us the
22 general nature of your questions.

23 MR. GARBETT: The first is on
24 Transmission Line Safety and Public Nuisance. Is
25 that the lines themselves are subject to radiating

1 EMI and having monitoring programs. The question
2 is if the lines were buried, you would not have
3 those problems.

4 The same way as far as the safety and
5 public nuisances, as far as bird hits and a
6 monitoring program of that. If the lines were
7 buried, you would not have that problem.

8 This is public safety and nuisance, and
9 these are items that could very well be taken care
10 of because it is a very short run of cable and
11 transmission line, and would save the Applicant
12 much money in the aftereffect.

13 Thank you.

14 PRESIDING MEMBER LAURIE: Mr. Valkosky,
15 the party has just offered a statement. I'm not
16 satisfied -- or, let me ask you, because I don't
17 want to disallow any relevant evidence.

18 Is the party willing to stip -- are you
19 prepared to offer some stipulation that Mr. Harris
20 can accept? Would you like to make a statement
21 and, if true, Mr. Harris can accept it rather than
22 call your witness up?

23 MR. GARBETT: Fine. I would just make
24 that statement, that there would be savings of
25 money to the Applicant, there would be enhanced

1 public safety and that if the transmission lines,
2 a short distance, were buried going up the hill,
3 because there would be no bird strikes or bird
4 monitoring. The EMI would be minimized, and
5 therefore they could eliminate an EMI monitoring
6 program for television interference.

7 MR. HARRIS: I want to make sure I
8 understand, Mr. Garbett. Are you saying the
9 transmission line going up Tulare Hill is your
10 concern? The existing transmission line.

11 MR. GARBETT: Well -- well, no. Not the
12 existing transmission line. That is, quote, part
13 of the environment as we're considering. What I
14 am considering is the new 240 foot transmission
15 line, you have posts going up the hill.

16 MR. HARRIS: You know, the position
17 we've taken is our design is the best
18 environmentally, and in terms of cost, as well. I
19 don't know of anybody who's ever engineered a 240
20 foot underground cable that --

21 HEARING OFFICER VALKOSKY: Okay. Now,
22 Mr. Harris, you're testifying.

23 MR. HARRIS: I am. You're right.
24 Guilty.

25 MR. GARBETT: I think the total savings

1 would come out about even, when you consider the
2 monitoring programs.

3 MR. HARRIS: If we want to accept Mr.
4 Garbett's comments or statement as public comment,
5 we're willing to stipulate to those as public
6 comment.

7 HEARING OFFICER VALKOSKY: Okay. Staff
8 have any difficulty?

9 MS. WILLIS: No, we would accept that as
10 public comment, as well.

11 HEARING OFFICER VALKOSKY: All right.
12 That will be so noted.

13 Mr. Harris, would you like to move your
14 testimony?

15 MR. HARRIS: Yes, I would like to move
16 the testimony for Transmission Line Safety.
17 That's Section 5.5 of the AFC. And that's already
18 a document that's been introduced into evidence as
19 Exhibit 1.

20 And I would also move this portion of
21 6A, which is Mr. Wood's prepared testimony. So
22 both of those items have already been previously
23 moved, so.

24 HEARING OFFICER VALKOSKY: Okay.
25 Objection?

1 MS. WILLIS: None.

2 HEARING OFFICER VALKOSKY: No objection.

3 That'll be received.

4 (Thereupon the Transmission Line
5 Safety and Nuisance portions of
6 Exhibit 1 and Exhibit 6A were
7 received into evidence.)

8 HEARING OFFICER VALKOSKY: Ms. Willis.

9 MS. WILLIS: Yes. We'd like to move the
10 section of the FSA, Transmission Line Safety and
11 Nuisance, as part of Exhibit 7.

12 HEARING OFFICER VALKOSKY: Okay. I'll
13 note that's pages 133 through 145, as I have it.

14 Is there objection? No objection.

15 That's admitted.

16 (Thereupon the Transmission Line
17 Safety and Nuisance portion of
18 Exhibit 7 was received into evidence.)

19 HEARING OFFICER VALKOSKY: Okay. At
20 this time we'll take a -- about a 12 minute
21 recess. We'll reconvene at 9:00 o'clock.

22 (Thereupon a recess was taken.)

23 HEARING OFFICER VALKOSKY: We're on.

24 Okay. The next topic is Waste
25 Management. It is my understanding that Mr. Boyd

1 was the only one that had questions on this at one
2 time, but that he has since withdrawn those
3 questions. Is that your understanding, Mr.
4 Richins?

5 MR. RICHINS: Well, it was my
6 understanding that he did not withdraw those, but
7 he is not here now. He indicated in an e-mail to
8 me that he wanted to ask questions as it related
9 to contamination at the Metcalf site.

10 HEARING OFFICER VALKOSKY: Okay.
11 Although some of those at least would be related
12 to hazardous materials, isn't --

13 MR. RICHINS: That's correct.

14 HEARING OFFICER VALKOSKY: That is
15 correct. Okay.

16 Did Mr. Boyd convey any questions to any
17 of the other Intervenors? Mr. -- Mr. Wade, since
18 he -- no, he did not. Okay.

19 Well, in that case --

20 MR. WILLIAMS: I'm also on the hook to
21 talk. I -- in the area of Reliability, I have
22 been asked to deal with one of Mr. Boyd's points,
23 and I have some questions of my own.

24 HEARING OFFICER VALKOSKY: Okay. That's
25 -- that's Reliability. And I'll duly note that,

1 Mr. Williams, and thank you for that.

2 But right now, I'm just really
3 interested in Waste Management. Mr. Boyd, I take
4 it, had not given any questions to your or to
5 anyone else that you're aware of?

6 Okay, fine. With that, the Committee
7 would be prepared to accept the prepared testimony
8 by stipulation.

9 Mr. Harris, are there any additional
10 exhibits?

11 MR. HARRIS: Let me just clarify which
12 documents we're moving in. This is the prior
13 filing section of the Waste Management testimony,
14 and I'll go through those real quickly.

15 HEARING OFFICER VALKOSKY: We're dealing
16 solely with the Waste Management topic at this
17 time.

18 MR. HARRIS: Waste Management, to begin
19 with.

20 HEARING OFFICER VALKOSKY: Yes. That is
21 pages 177 through 190.

22 Okay. Mr. Harris, continue.

23 MR. HARRIS: Okay. Section 813 of the
24 AFC is part of Document 1, as is the appendix,
25 813A. AFC Supplements A and C have been marked

1 already as 3 -- as Exhibits 3 and 5, respectively.
2 The complex ones are the data responses here, and
3 let me go through those.

4 Responses to CEC Data Requests, the
5 first document has already been moved in, is the
6 responses Set 1A. That's already been identified
7 as Item 13, and that deals with the first three --
8 excuse me, Data Requests 111 and 112. So that's
9 an existing item, Number 13.

10 Number 1 -- Data Response Number 113 is
11 our response 1C, that's a new document, so I'd ask
12 that that be moved in.

13 HEARING OFFICER VALKOSKY: Okay. We'll
14 identify 1C as Exhibit 20. Or, Response Number
15 113.

16 (Thereupon Exhibit 20 was marked
17 for identification.)

18 MR. HARRIS: Okay. Response set 2C has
19 to do with question 210, so I'd move that one in
20 as a new document.

21 HEARING OFFICER VALKOSKY: We'll mark
22 that Exhibit 21.

23 (Thereupon Exhibit 21 was marked
24 for identification.)

25 MR. HARRIS: And then the remaining data

1 requests, I believe, are all part of Set 5,
2 comments on Set 5. That is also a new document,
3 and this is the only place where that document
4 will be used, so I'd identify that and ask that it
5 be moved into evidence.

6 HEARING OFFICER VALKOSKY: We'll mark
7 that as Exhibit 22.

8 (Thereupon Exhibit 22 was marked
9 for identification.)

10 MR. HARRIS: Okay. And then the last
11 bullet is comments on the PSA regarding Waste
12 Management. That's identified as Set Number 7.
13 That is also a new document.

14 HEARING OFFICER VALKOSKY: We'll mark
15 that as Exhibit 23.

16 (Thereupon Exhibit 23 was marked
17 for identification.)

18 MR. HARRIS: Okay. So we've identified
19 those documents. I would like to move the Set 5
20 into evidence, as this is the only witness who
21 deals with those data -- data responses.

22 HEARING OFFICER VALKOSKY: Refer to that
23 by exhibit number again, just for clarity of the
24 record.

25 MR. HARRIS: Exhibit 22.

1 HEARING OFFICER VALKOSKY: Exhibit 22.

2 Okay. Is there objection?

3 MS. WILLIS: None.

4 HEARING OFFICER VALKOSKY: No objection.

5 Exhibit 22 is received.

6 (Thereupon Exhibit 22 was received
7 into evidence.)

8 HEARING OFFICER VALKOSKY: Anything
9 further, Mr. Harris?

10 MR. HARRIS: Not on the issue of Waste
11 Management.

12 HEARING OFFICER VALKOSKY: Staff?

13 MS. WILLIS: Yes. We'd like to move the
14 section of the FSA, Waste Management, pages 177 to
15 190, into evidence.

16 HEARING OFFICER VALKOSKY: Is there
17 objection? No objection. Twenty-four -- or, I'm
18 sorry, that portion of Exhibit 7 is received.

19 (Thereupon the Waste Management
20 Section of Exhibit 7 was received
21 into evidence.)

22 HEARING OFFICER VALKOSKY: Is there any
23 public comment dealing solely with the matter of
24 the topic of Waste Management?

25 There is none.

1 Okay. Mr. Scholz.

2 MR. SCHOLZ: Is the city --

3 HEARING OFFICER VALKOSKY: Go ahead.

4 MR. SCHOLZ: This is Scott Scholz.

5 Is the city letter that we can call the
6 Randy Shipes letter, is that in evidence yet?

7 HEARING OFFICER VALKOSKY: Could you
8 identify that document for me?

9 MR. RICHINS: No, it's not, and that
10 would be coming in under Water Resources, more
11 than likely.

12 HEARING OFFICER VALKOSKY: If that's the
13 letter that Mr. --

14 MR. RICHINS: We discussed it earlier
15 today, briefly.

16 HEARING OFFICER VALKOSKY: No. That is
17 not in evidence. That's, again, a topic which
18 apparently is -- again, that's the one I haven't
19 seen yet, and it apparently is pertinent to Water
20 Resources.

21 MR. SCHOLZ: It's also pertinent to
22 Waste Management, I would imagine, so I was
23 curious how we would address a question on that.
24 If you want to give us some guidance.

25 HEARING OFFICER VALKOSKY: How is it --

1 I, again, without seeing the document --

2 MR. SCHOLZ: I'm sorry you don't have a
3 copy --

4 MR. RICHINS: We have it here.

5 Are you -- are you speaking of the waste
6 discharge from the plant? That would also be
7 Water. So the sewer discharge is also water.

8 MR. SCHOLZ: The sewer connection is
9 going to be in Water.

10 MR. RICHINS: Yes.

11 MR. SCHOLZ: Okay. Thank you.

12 HEARING OFFICER VALKOSKY: Okay.

13 Anything else on Waste Management, as the topic is
14 defined here?

15 No. We'll close the record on that.

16 The next topic -- and again, I'm just
17 going by the ones that Mr. Boyd indicated -- was
18 the sole person to indicate the desire to cross
19 examination -- cross examine. Goes to Efficiency.

20 MR. HARRIS: Mr. Valkosky, could we take
21 Worker Safety out of order? I have a witness who
22 I'd like to be able to release.

23 HEARING OFFICER VALKOSKY: All right,
24 fine.

25 MR. HARRIS: Thank you.

1 HEARING OFFICER VALKOSKY: Worker Safety
2 and Fire Protection, which is the last topic
3 originally contained on the agenda. And, again,
4 CARE was the only one that desired to comment on
5 that.

6 I will note at the Prehearing Conference
7 that Mr. Ajlouny had certain questions that were
8 deferred, in my recollection, to the Hazardous
9 Materials, Traffic and Transportation topic. So
10 with that -- that exception noted.

11 Mr. Harris.

12 MR. WILLIAMS: So what pages are we --

13 HEARING OFFICER VALKOSKY: We are --
14 when we get to Staff, we'll be talking about pages
15 113 through 131 of the Staff Assessment. Right
16 now, however, we're on Applicant.

17 Mr. Harris.

18 MR. HARRIS: Just to identify the
19 documents that are listed in the prior filing
20 section, and these have all been introduced.
21 Section 8.7 is of the AFC, which is Exhibit 1.
22 Supplements A and C, again, are Exhibits 3 and 5,
23 respectively.

24 Responses to Intervenor Jeff Wade Data
25 Request, that's Exhibit 16A. And the comments on

1 the PSA is our Set -- PSA Comment Set 2, which is
2 Exhibit 24, and Set 7, which is Exhibit 23. So
3 all of those have been previously --

4 HEARING OFFICER VALKOSKY: Twenty-four,
5 we haven't identified 24 yet. That's the next --

6 MR. HARRIS: Oh, I'm sorry. I am wrong
7 on that. PSA Set 2 is a new item, which would be
8 offered as Number 24.

9 HEARING OFFICER VALKOSKY: Okay. We'll
10 identify that as Exhibit 24.

11 (Thereupon Exhibit 24 was marked
12 for identification.)

13 HEARING OFFICER VALKOSKY: Is that it?
14 Would you want to move those in?

15 MR. HARRIS: Yeah, I'd like to move all
16 those documents.

17 HEARING OFFICER VALKOSKY: Okay. Is
18 there objection?

19 MS. WILLIS: None.

20 MR. WILLIAMS: Just a brief question.
21 Are you moving these in? Because they're not
22 listed. Are there references in the FSA? Are
23 these documents you've just moved mentioned as
24 references in the FSA?

25 HEARING OFFICER VALKOSKY: These

1 documents are mentioned as references in the
2 prepared testimony filed on December 7th, by
3 Applicant, and represent items that have been
4 previously docketed and served upon the parties in
5 this case. Is that correct, Mr. Harris?

6 MR. HARRIS: Yes, it is, although I've
7 misspoken in terms of moving them into evidence.
8 Apparently there are other witnesses who will be
9 using these same documents, so I'd like them
10 marked, but not moved yet.

11 HEARING OFFICER VALKOSKY: All right.

12 MR. WILLIAMS: Well, just off the record
13 for a moment. Could you explain why all the
14 documents that are relevant are not cited in -- as
15 references in the FSA, and you're moving in these
16 additional documents? Is there --

17 HEARING OFFICER VALKOSKY: Mr. Williams
18 --

19 MR. WILLIAMS: Yes, sir.

20 HEARING OFFICER VALKOSKY: -- these
21 represent Applicant's analysis. These are
22 documents supporting Applicant's position on this
23 topic in this case. They may be relied upon by
24 Staff. Staff may rely upon additional
25 information. The important thing is that each of

1 these documents has been provided to all of the
2 parties, and they've been identified just as -- as
3 we have for the other --

4 MR. WILLIAMS: Yeah, I agree they've
5 been docketed. But the Staff writes a report
6 which is the basis for the licensing, which is the
7 FSA, and it lists the material that it relied upon
8 in preparing the FSA. Now it appears to me that
9 we're adding additional references that the Staff
10 may not have relied upon in preparing the FSA. So
11 that's my procedural question, off the record.

12 HEARING OFFICER VALKOSKY: Well, I --
13 again, I just have difficulty understanding that,
14 because part of the documents referenced are the
15 AFC. You know, the big, bulky volume --

16 MR. WILLIAMS: That's been largely
17 superseded.

18 HEARING OFFICER VALKOSKY: That's your
19 opinion, sir. And the supplements to it. The
20 responses, these are all part of the information
21 available to all of the parties in the case.

22 MR. WILLIAMS: I know. I --

23 HEARING OFFICER VALKOSKY: All the
24 Applicant is doing is indicating with specificity
25 which of those documents pertain to a particular

1 topic area, in this case, Worker Safety.

2 MR. WILLIAMS: Thank you. I -- I don't
3 understand that.

4 HEARING OFFICER VALKOSKY: Okay.

5 Anything further, Mr. Harris?

6 MR. HARRIS: No, thank you.

7 HEARING OFFICER VALKOSKY: Okay. I take
8 it you're moving in that portion of Exhibit 6A
9 that pertains to Worker Safety?

10 MR. HARRIS: Yes.

11 HEARING OFFICER VALKOSKY: Okay. Is
12 there objection to that?

13 No. That'll be received.

14 (Thereupon the Worker Safety portion
15 of Exhibit 6A was received into
16 evidence.)

17 HEARING OFFICER VALKOSKY: Ms. Willis.

18 MS. WILLIS: Staff would like to move
19 the section of the Final Staff Assessment, Worker
20 Safety and Fire Protection, pages 113 to 131, into
21 the record, part of Exhibit 7.

22 HEARING OFFICER VALKOSKY: Okay. Is
23 there objection?

24 No objection. So ordered.

25 ///

1 (Thereupon the Worker Safety and
2 Fire Protection portion of Exhibit 7
3 was received into evidence.)

4 HEARING OFFICER VALKOSKY: Is there any
5 general public comment pertinent solely to the
6 topic of Worker Safety and Fire Protection?

7 Seeing none, we'll close the evidence in
8 that -- close the record, excuse me, on that
9 topic.

10 The next topic is Efficiency. Once
11 again, Mr. Boyd is the only individual who had
12 indicated an interest in cross examining on that
13 topic.

14 MR. WILLIAMS: Excuse me. Is -- the
15 topic is Efficiency?

16 HEARING OFFICER VALKOSKY: Yes.

17 MR. HARRIS: Mr. Valkosky.

18 HEARING OFFICER VALKOSKY: Mr. Harris.

19 MR. HARRIS: There was a question about
20 nominal rating on Efficiency that you wanted
21 answers, so we --

22 HEARING OFFICER VALKOSKY: I thought --
23 well, I thought we deferred that to Facility
24 Design, or am I mistaken? If this is the
25 appropriate place to -- to do it, that's fine.

1 MR. HARRIS: Okay, that's fine. We can
2 do it in Facility Design. It's the same witness.

3 HEARING OFFICER VALKOSKY: Okay. I'm
4 just trying to -- to go through the topics.

5 Mr. Boyd is not here. Is anyone aware
6 of any questions that Mr. Boyd had on Efficiency?

7 MR. WILLIAMS: I am aware of one
8 question, sir, but I -- the question is this. The
9 Westinghouse Frame 7 machine is less efficient
10 than a GE machine of a comparable size. And some
11 of the requirements in the siting regulations
12 appear to require the Applicant to pick -- or
13 justify the efficiency of the machine that they
14 pick. Is there some reason that this is not being
15 done in this particular application?

16 HEARING OFFICER VALKOSKY: Okay. You
17 know, that's a -- that's a relevant question. And
18 since we have the same witness from both parties
19 for this topic on Efficiency, Reliability, and
20 Facility Design, we'll just present the witness
21 and you can ask --

22 MR. WILLIAMS: I appreciate that.

23 HEARING OFFICER VALKOSKY: -- that
24 question to that witness.

25 MR. WILLIAMS: Thank you.

1 HEARING OFFICER VALKOSKY: Okay?

2 Mr. Harris -- and I would note, although
3 these are divided into discrete topics, because of
4 the identity of the witnesses, I'd prefer that
5 counsel just, to the extent possible, cover all
6 three topics. Okay?

7 MR. HARRIS: Okay.

8 HEARING OFFICER VALKOSKY: Any problem
9 with that?

10 MS. WILLIS: None.

11 HEARING OFFICER VALKOSKY: No. Okay.

12 Mr. Harris.

13 MR. HARRIS: We can do that.

14 We'd ask that the witness be sworn.

15 HEARING OFFICER VALKOSKY: Please swear
16 the witness, please.

17 MR. WILLIAMS: We're going to do
18 Facility Design?

19 HEARING OFFICER VALKOSKY: No, we're
20 doing Efficiency, Reliability, and Facility
21 Design.

22 MR. WILLIAMS: All right. Thank you.

23 HEARING OFFICER VALKOSKY: They're all
24 the -- the same witnesses.

25 Please. Now, the witness can be sworn.

1 (Thereupon James Dunstan was, by the
2 reporter, sworn to tell the truth,
3 the whole truth, and nothing but
4 the truth.)

5 TESTIMONY OF
6 JAMES DUNSTAN

7 called as a witness on behalf of the Applicant,
8 having first been duly sworn, was examined and
9 testified as follows:

10 THE WITNESS: My name is James Dunstan,
11 D-u-n-s-t-a-n.

12 DIRECT EXAMINATION

13 BY MR. HARRIS:

14 Q Mr. Dunstan, what subject matter
15 testimonies are you here to sponsor today?

16 A I'm here today to sponsor testimony in
17 the areas of Facility Design, Power Plant
18 Reliability, and Power Plant Efficiency.

19 Q And specifically, which documents are
20 you sponsoring as part of your testimony today?

21 A I am sponsoring today Sections 6 and 10
22 of the AFC; Appendices 10A through 10G of the AFC;
23 the relevant portions of Supplements A and C to
24 the AFC; Applicant's responses to CEC Data Request
25 Numbers 40 through 45; Applicant's responses to

1 Intervenor Jeff Wade Data Requests designated
2 JW1A-17, JW1-29, JW1-30.

3 I'm also sponsoring the relevant
4 portions of Applicant's comments on the PSA,
5 designed Set 2, dated June 7th, 2000.

6 Q Okay. For -- for clarity, the sections
7 -- I'll go through each of these again. Sections
8 6 and 10 of the AFC are part of Exhibit 1, as are
9 the next item, Appendices A -- 10A through 10G.

10 Supplements A and C are Exhibits 3 and
11 5, respectively. Responses to CEC Data Requests
12 40 through 45 are Exhibit -- is Exhibit 13. The
13 responses to Intervenor Jeff Wade is Exhibit 16A,
14 and the comments on the PSA has been -- is Number
15 24. So those items have all been placed into --
16 or, excuse me, identified.

17 Mr. Dunstan, are there any changes or
18 corrections to your testimony?

19 A There is one. I want to add to the list
20 of documents I'm sponsoring today a letter dated
21 August 11th, year 2000, to Mr. Patrick E. Chou of
22 the San Jose Fire Department, signed by myself.
23 This is in Dockets as Document Number 15569.

24 Q So that document was previously filed
25 and served in this proceeding?

1 A That's correct.

2 Q And docketed. Okay. I would actually
3 ask that that item be added as a new exhibit,
4 Number --

5 HEARING OFFICER VALKOSKY: Identified as
6 Exhibit 25, by my count.

7 MR. HARRIS: That'd be right. Thank
8 you.

9 (Thereupon Exhibit 25 was marked
10 for identification.)

11 BY MR. HARRIS:

12 Q Mr. Dunstan, I also wanted to ask about
13 -- well, let me ask. There are --

14 (Inaudible asides.)

15 BY MR. HARRIS:

16 Q Right. Have you seen the Staff's
17 proposed changes to the -- that was passed out
18 earlier, related to GEN-3?

19 A Yes, I have.

20 Q And have you had a chance to analyze
21 those proposed changes?

22 A I have particularly looked at the
23 proposed changes to Condition GEN-3.

24 Q And do you find that Staff proposed
25 change to be acceptable?

1 A Yes, I do.

2 Q And so with that one noted exception,
3 there are no other changes or corrections to your
4 testimony; is that correct?

5 A That is correct.

6 Q Were these documents prepared either by
7 you or at your direction?

8 A Yes, they were.

9 Q And are the facts therein true to the
10 best of your knowledge?

11 A Yes.

12 Q And are the opinions stated therein your
13 own?

14 A Yes.

15 Q And do you adopt this as your testimony
16 for this proceeding?

17 A Yes.

18 Q Could you please briefly review your
19 qualifications for us?

20 A I hold Bachelor of Science and Master of
21 Science degrees in Mechanical Engineering from
22 Washington University in St. Louis. I have been
23 registered in the State of California as a
24 Professional Mechanical Engineer since 1973, and I
25 have been directly involved in the design of

1 various types of power plants and power plant
2 systems, including construction support and
3 commissioning for essentially all of my 30 years
4 with Bechtel.

5 Q And what's your current position with
6 Bechtel?

7 A My Bechtel title is Senior Project
8 Engineer. I am currently assigned to the
9 Calpine/Bechtel Joint Development team as the
10 Senior Technical Advisor.

11 Q Okay. Thank you.

12 Per the request of the Hearing Officer,
13 now, can you provide us with a short summary for
14 each of the three topic matters that you'll be
15 covering today?

16 A In the topic of Facility Design, the
17 Metcalf Energy Center is a conventional combined
18 cycle generating facility that will employ proven
19 technologies and conservative design to achieve
20 its objective of efficiently producing clean,
21 reliable energy to meet the Bay Area's increasing
22 demand.

23 The generating facility itself is
24 remarkable only in that it will employ cooling
25 tower plume abatement technology and extensive

1 architectural treatment to make it more visually
2 compatible with the proposed office building
3 campus to be developed in the area south of the
4 project site.

5 The Metcalf Energy Center project is
6 remarkable in three significant areas. First, MEC
7 will require no new transmission towers. MEC's
8 natural gas supply pipeline will be only one mile
9 in length. And, third, MEC will use recycled
10 water for more than 80 percent of its total water
11 demands. This will significantly reduce the City
12 of San Jose's discharge of fresh treated
13 wastewater into the salt water environment of San
14 Francisco Bay.

15 In the area of Power Plant Reliability,
16 the Metcalf Energy Center will employ proven
17 technologies and conservative design, including
18 appropriate redundancy of critical components, to
19 achieve a level of reliability that will make it
20 one of California's most preferred sources of
21 electrical energy. The twin engine configuration
22 facility will allow it to generate at least half
23 of its nominal maximum capacity when one
24 combustion turbine generator train is out of
25 service for maintenance. And full capacity steam

1 turbine bypass systems will allow the two
2 combustion turbine generators to operate at full
3 load in the event of failure of the steam turbine
4 generator system.

5 As regards Power Plant Efficiency, the
6 Metcalf Energy Center will employ the most
7 efficient power generation technology available
8 today. This level of efficiency will allow the
9 Metcalf Energy Center to produce much needed
10 reliable energy for San Jose and the Silicon
11 Valley, while consuming 40 percent less natural
12 gas than the most efficient of the older power
13 plants in the Bay Area.

14 Q A couple of questions that came up
15 during earlier subjects that I wanted to cover
16 with you. The first one has to do with the idea
17 of a nominal rating of the facility. Can you take
18 some time and explain to us what nominal means,
19 and how that differs from maximum?

20 A Certainly. The generating capability of
21 combustion turbine generators varies with ambient
22 temperature, and particularly the density of the
23 ambient air. It also varies with whether power
24 augmentation, that is, steam injection into the
25 expansion turbine section of the machine is

1 employed to increase the power output of a unit.
2 Therefore, while the engines are described as
3 nominally capable of producing 200 megawatts each,
4 their actual generating capacity will vary, even
5 at full baseload conditions. We expect that in
6 the conditions to be encountered in the Metcalf
7 Energy Center, each of these engines might be
8 capable of producing on the order of 185 megawatts
9 under the most favorable conditions for the
10 combustion turbines.

11 The steam turbine generator, on the
12 other hand, is completely subject to the
13 availability of steam produced in the heat
14 recovery steam generators, and the ambient
15 conditions as they affect the efficiency of the
16 cooling tower. While we have described the steam
17 turbine generator as having a nominal maximum
18 capability of 235 megawatts, in reality our
19 predictions of the performance of this plant would
20 indicate that the likely maximum generation of the
21 plant will be something on the order of 580
22 megawatts.

23 For purposes of various of our studies,
24 including power system load flow calculations,
25 we've elected to simplify this description by

1 simply characterizing the plant as producing 600
2 megawatts.

3 Q Okay. So the nominal rating, then, is a
4 theoretical rating based upon assumptions such as
5 ambient temperature, and what other assumptions?

6 A Whether inlet combustion air fogging is
7 being used to increase the density of the
8 combustion air, whether steam is being injected
9 into the combustion turbine expansion sections,
10 and whether the supplemental firing system, called
11 duct burners, in the heat recovery boilers are in
12 service.

13 Q Okay. Thank you. Let me move on to a
14 couple other subjects that came up, actually, I
15 think, during the Geology session, and we talked
16 about the seismicity and liquefaction.

17 Can you touch first on the issue of
18 liquefaction, and also in the context of the
19 construction of the facility.

20 A Well, liquefaction is one of the issues
21 that will have to be addressed in a geotechnical
22 report that will be part of the submittals pre-
23 construction, based on the boring program that was
24 described by our witness in Geology.

25 Depending on the extent to which

1 liquefaction might be expected to occur, if at
2 all, the location of various types of components
3 and their bearing conditions, the design engineer
4 working with the geotechnical engineer will
5 establish appropriate strategies for providing
6 stable foundation for any components that may be
7 in areas that may be subject to liquefaction.

8 This is -- there are straightforward
9 design approaches to doing this, and the ultimate
10 design selection will be subject to review under
11 our CBO design review submittal requirements.

12 Q I want to talk with you about design
13 criteria in the Facility Design. And we've heard
14 a lot about seismic, or general descriptions of
15 that. Can you take a few moments and explain, you
16 know, what that designation means, and how it
17 affects the design of the facility?

18 A Well, Seismic Zone 4 is a term developed
19 in the Uniform Building Code, which is adopted in
20 California as the California Building Code, and
21 it's the designation assigned to those geographic
22 areas which are subject to the strongest ground
23 shaking potential.

24 As regards power plants, there are
25 specific rules embedded in the building codes for

1 the treatment of -- of different types of
2 structures that are typical to power plants. And
3 specified load combinations, and various
4 parameters that are all evaluated by the chief
5 building official in determining whether a
6 proposed design is in compliance with the
7 requirements of the building code.

8 The building code specifies nominal peak
9 ground accelerations for areas within the
10 geographic Zone 4, and also prescribes procedures
11 by which the potential for different, either
12 greater or lesser peak ground accelerations may be
13 found at a specific site, based on the
14 geotechnical properties of the site proximity to
15 known active faults, and the soils types. And
16 those evaluations are all to be included in the
17 geotechnical report that will serve as the basis
18 for any subsequent structural designs that are
19 submitted to the CBO for review.

20 Q Okay. Now, you've had an opportunity to
21 examine the applicable laws, ordinances,
22 regulations and standards for these three areas.
23 Did you make a determination about the project's
24 compliance with those applicable LORS?

25 A Yes, I did.

1 Q And what was that determination?

2 A My determination is that subject to
3 compliance with the proposed Conditions of
4 Certification, the project will be in compliance
5 with those LORS.

6 Q And you've had a chance to review the
7 Final Staff Assessment, as well?

8 A Yes, I have.

9 Q And you've reviewed the Conditions of
10 Certification in the Final Staff Assessment?

11 A Yes, I have.

12 Q With the one exception noted above,
13 where you agreed with Staff's position on GEN-3,
14 with that exception, do you find these Conditions
15 of Certification acceptable?

16 A Yes, I do.

17 MR. HARRIS: Okay. I would like to move
18 a document into evidence before making the witness
19 available for cross examination. And that's
20 Exhibit 25. That's -- this testimony today is the
21 only testimony using that particular exhibit, so.

22 HEARING OFFICER VALKOSKY: Is there
23 objection?

24 MS. WILLIS: No.

25 HEARING OFFICER VALKOSKY: Hearing no

1 objection, Exhibit 25 is admitted.

2 (Thereupon Exhibit 25 was received
3 into evidence.)

4 MR. HARRIS: And I would make the
5 witness available for cross examination.

6 HEARING OFFICER VALKOSKY: Before we do
7 that, just a couple of minor points of
8 clarification.

9 How does the maximum thermal efficiency
10 of, I believe, 55 percent, which appears in your
11 testimony, compare to similarly sized units?

12 THE WITNESS: That's very representative
13 of the current generation of combined cycle plants
14 that are being proposed and built in California.

15 HEARING OFFICER VALKOSKY: And how does
16 that compare to a -- an earlier generation unit,
17 say one of ten years ago, if that's a fair
18 comparison?

19 THE WITNESS: Ten years ago is not a bad
20 comparison. That would be, oh, the -- the era of
21 Gilroy and King City, and many of the other plants
22 certified by this Commission, based on the General
23 Electric 7E technology. There -- there has been a
24 dramatic increase in the efficiency of these units
25 because of the evolution of the combustion turbine

1 technologies.

2 HEARING OFFICER VALKOSKY: Could you
3 quantify what that -- or --

4 THE WITNESS: In general --

5 HEARING OFFICER VALKOSKY: -- give me a
6 comparative figure?

7 THE WITNESS: -- from -- from the good
8 old days when cogeneration plants had to meet
9 PURPA requirements, really good plants were
10 considered -- they could make 45 percent
11 electrical efficiency. We're now in the range
12 where anything over 52 percent, 55 percent, is --
13 is readily achievable with the current F class
14 technology.

15 HEARING OFFICER VALKOSKY: Okay. In the
16 -- the F class technology, are there -- is there
17 hardware available that would be likely to exceed
18 55 percent in any reliable manner?

19 THE WITNESS: I don't know of any that's
20 currently commercially available. All of the
21 heavy industrial turbine manufacturers are
22 continually pressing combustion technology,
23 metallurgy cooling technologies, to -- to get
24 single digit efficiency increases.

25 HEARING OFFICER VALKOSKY: Okay.

1 Earlier, and just to follow up on the question Mr.
2 Williams had of the -- the Geology witnesses, he
3 asked if it would not be -- my recollection is he
4 asked if it would not be prudent design practice
5 to have a seismically activated automatic gas
6 shutoff valve on the pipeline. Do you recall
7 hearing that question?

8 THE WITNESS: Yes, I recall hearing
9 that.

10 HEARING OFFICER VALKOSKY: Okay. Could
11 you give me your opinion as to whether such a
12 device is appropriate?

13 THE WITNESS: I -- I've reviewed recent
14 reports by the United States Department of
15 Transportation dated as recently as mid-1999,
16 which concludes that such devices would provide
17 little, if any, real improvement in pipeline
18 safety. The reasoning being that the bulk of all
19 reported injuries and damage associated with
20 pipeline ruptures occurs within the first two
21 minutes of the event, and that the activation time
22 for any type of automatic device, assuming it
23 functioned properly, would be greater than that
24 period of time.

25 And that report from the U.S. DOT

1 therefore concludes that there would be no real
2 enhancement of public safety through the
3 installation of such valves.

4 HEARING OFFICER VALKOSKY: Okay. Thank
5 you.

6 Cross examination, Ms. Willis?

7 MS. WILLIS: No questions.

8 HEARING OFFICER VALKOSKY: Okay. And
9 again, we're taking these three topics as a whole.

10 Mr. Wade, are you representing Santa
11 Teresa Citizens Action Group? Because we have
12 them down for cross.

13 MR. WADE: No --

14 MR. SCHOLZ: That was intended to be me
15 when we did this, so --

16 HEARING OFFICER VALKOSKY: Oh, I'm
17 sorry. Okay.

18 MR. SCHOLZ: -- but you wrote --

19 HEARING OFFICER VALKOSKY: I'm sorry.

20 Then Mr. -- Mr. Scholz.

21 MR. SCHOLZ: I appreciate doing all
22 three of these together, since I'm in two of them
23 and I can probably do it fairly quickly. I'm
24 trying to organize this.

25 ///

1 CROSS EXAMINATION

2 BY MR. SCHOLZ:

3 Q Under Reliability. On page 614 of the
4 FSA, water is a reliability requirement for the
5 project, yet the city may not provide water to the
6 project. Is this critical to have water, or is
7 there an alternative solution to still make this
8 project work?

9 A The project we propose for certification
10 by this Commission will be heavily dependent on
11 the continuous availability of adequate water
12 supplies.

13 Q And it has to be provided from the city?

14 A The plant will need water.

15 Q Have you identified any other places to
16 get water, other than through city provisions?
17 Entitlements, I guess, I don't know, I'm looking
18 for the right word.

19 A It's my understanding that we would be
20 required to secure water from a retailer, and that
21 in the area of the proposed project there are two
22 potential retailers. One is San Jose Muni, and
23 the other is Great Oaks Water Company. We would
24 look to one of those two retailers to provide
25 water to us.

1 Q I'm not sure if it's appropriate in this
2 topic area, or we should wait until Water, but
3 I'll put it out there and you can let me know.

4 Do you have an agreement for water?

5 MR. HARRIS: At this point I'll -- I was
6 going to give him a little latitude, but I'd like
7 to object on the basis that this is appropriate
8 for the Water testimony.

9 MR. SCHOLZ: I would assume you might.
10 Okay, thank you.

11 BY MR. SCHOLZ:

12 Q Also in Reliability, is natural gas the
13 only fuel source this project would ever use in
14 the life of the project?

15 A Natural gas is the only fuel that we
16 intend to use in the Metcalf Energy Center.

17 Q That's consistent with what we were told
18 in the workshops. Given the current situation
19 with natural gas, and what I -- what I've read in
20 the newspapers, it's my understanding that home
21 heating gets first dibs at natural gas, prior to,
22 or before power plants would. You know, producing
23 electricity by power plants. Is my understanding
24 correct on that?

25 A I don't know.

1 Q Okay. Has -- have you made a
2 determination at what -- I'm trying to get to the
3 reliability of this plant being operational. Have
4 you made a determination of what price natural gas
5 has to be at, you know, that you'll run your
6 plant?

7 MR. HARRIS: I'm going to --

8 MR. SCHOLZ: So we can understand --

9 MR. HARRIS: -- object on the basis that
10 it's not a relevant question.

11 HEARING OFFICER VALKOSKY: Okay. I
12 think, Mr. Scholz, maybe we can just get to where
13 I think you're going --

14 MR. SCHOLZ: Well, help me, Stan, right
15 here. Ninety-two to 98 percent availability
16 factor is stated --

17 HEARING OFFICER VALKOSKY: Right.
18 Right. Mr. --

19 MR. SCHOLZ: -- is that the same thing
20 as what we're talking about here?

21 HEARING OFFICER VALKOSKY: -- Mr.
22 Scholz. Mr. Dunstan, does the Applicant have
23 contractual arrangements for a natural gas fuel
24 supply?

25 THE WITNESS: None that I'm aware of.

1 HEARING OFFICER VALKOSKY: Okay.

2 THE WITNESS: Other than we have gone
3 through the normal studies with PG&E, and we have
4 correspondence from them saying that they will
5 provide natural gas service to us at the
6 quantities we've requested.

7 HEARING OFFICER VALKOSKY: Okay. So you
8 do have -- you do have a commitment from PG&E to
9 provide natural gas.

10 THE WITNESS: To the extent of a PG&E
11 response to a request for service. That's
12 correct.

13 HEARING OFFICER VALKOSKY: Right. Is
14 there a realistic possibility that in the case of
15 a gas shortage, gas to the project would be
16 curtailed?

17 THE WITNESS: I'm not aware of any --

18 HEARING OFFICER VALKOSKY: Okay.

19 THE WITNESS: -- regulations that would
20 cause that.

21 HEARING OFFICER VALKOSKY: Okay. That's
22 -- that's fine.

23 BY MR. SCHOLZ:

24 Q Does the availability factor come into
25 reliability, does that mean you can physically be

1 operational 92 to 98 percent of the hours in a
2 year? But how does that work, you know,
3 economically. You know, you make decisions
4 whether to run your plant or not. Is that
5 factored into this 92 to 98 percent reliability
6 factor?

7 A The 92 to 98 percent reliability factor
8 was based on data from similar plants of the
9 current generation, based on breakdown rates and
10 annual maintenance, scheduled maintenance
11 requirements.

12 Q So it's more based on mechanical
13 failure. You can be up that amount of time? It
14 -- it's not taking in any other factors.

15 HEARING OFFICER VALKOSKY: I think what
16 Mr. Scholz wants to know is if that availability
17 factor is -- essentially relates to the -- to the
18 hardware, the capability of the equipment to
19 operate at that percentage of the year. Is that
20 correct?

21 THE WITNESS: That's correct.

22 HEARING OFFICER VALKOSKY: And the next
23 question which I -- which I think he wanted to
24 know, is that is at least implicitly presuming
25 that fuel for the equipment is available. Is that

1 correct?

2 THE WITNESS: That is correct.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. SCHOLZ: Thank you.

5 BY MR. SCHOLZ:

6 Q Separate subject. Two quick questions
7 on Facility Design. The current design, what is
8 the footprint in acreage on the MEC site?

9 A The area inside the plant fence is
10 approximately ten acres.

11 Q And if push came to shove, can you fit
12 this power plant in smaller acreage? Or have you
13 hit your limits, ten acres, that's the best you
14 can do?

15 A The configuration of the Metcalf Energy
16 Center is optimized for the land available within
17 the fence.

18 Q So you're using what you have, and
19 that's what you've designed. You haven't -- it
20 couldn't be -- if you had an eight acre site, you
21 would design for an eight acre site, but this is
22 what you had, so you designed for a ten acre site?

23 A The configuration before this Commission
24 is the configuration for which we are seeking
25 certification.

1 Q Do you prefer not to answer the question
2 I asked you?

3 MR. HARRIS: I'd object and ask that you
4 rephrase the question.

5 MR. SCHOLZ: Thank you, Jeff.

6 MR. HARRIS: I'm not sure I know what
7 you're going for, Scott.

8 BY MR. SCHOLZ:

9 Q I'm trying to determine if this plant
10 could be designed -- the marks you're trying to
11 hit with this plant, could they be done in a site
12 smaller than ten acres?

13 A I'm not entirely sure. We -- we have
14 not done any such land studies.

15 Q So from your first -- from your
16 knowledge, ten acres is probably the smallest you
17 can go.

18 A My opinion is this is a tight site.

19 Q Do you have any knowledge of a site
20 similar in hitting these marks on a smaller site?
21 Do you have any knowledge of that?

22 A I am not aware of any twin engine 600
23 megawatt combined cycle plant that has been built
24 on a smaller footprint.

25 MR. SCHOLZ: Okay. That's what I wanted

1 to know. Thank you.

2 HEARING OFFICER VALKOSKY: Thank you,
3 Mr. Scholz.

4 Mr. Ajlouny, you had questions on
5 Facility Design, I believe.

6 MR. AJLOUNY: Yes. Well, do I just ask
7 on that, or all three are open to me?

8 HEARING OFFICER VALKOSKY: Well, that
9 one is definitely open to you. And the other two,
10 you know the rules.

11 MR. AJLOUNY: Well, actually, two out of
12 the three this time, huh?

13 HEARING OFFICER VALKOSKY: You bet.

14 MR. AJLOUNY: Okay.

15 CROSS EXAMINATION

16 BY MR. AJLOUNY:

17 Q Well, one thing I'll ask, and I'm
18 learning as we go, for -- thanks for the
19 education, Calpine. But this -- and I forget the
20 letters now, but the -- there's a -- there's a --
21 oh, my gosh, my mind's gone.

22 Instead of modeling, there's another
23 term we've been using tonight that's like a
24 standard for California or the United States. Can
25 you help me with that?

1 HEARING OFFICER VALKOSKY: What --

2 MR. AJLOUNY: The seismic, for the
3 seismic --

4 HEARING OFFICER VALKOSKY: The Uniform
5 Building Code, or the California Building Code?
6 Is that --

7 MR. AJLOUNY: Yes.

8 HEARING OFFICER VALKOSKY: -- the
9 standard --

10 MR. AJLOUNY: Yeah.

11 HEARING OFFICER VALKOSKY: -- you're
12 talking --

13 BY MR. AJLOUNY:

14 Q Okay. That code, the California code,
15 is that to replace any modeling? I mean, does
16 California do the modeling and then you guys go by
17 that code? Is that --

18 A No. The -- the California Building Code
19 includes provision for structural design by a
20 number of approaches. And the designer has
21 flexibility within limits to select the
22 methodology to be used in a particular design,
23 subject to the acceptance of the local chief
24 building official.

25 Q Okay. Well, I guess my concern and my

1 question is, has there been any modeling of
2 seismic consequences for that site?

3 A Not that I'm aware of.

4 Q Do you feel that's necessary? To ensure
5 safety for the neighborhood, citizens of that
6 area.

7 A The question may be more appropriate for
8 the geologists. But I am not aware of any
9 requirements in building code or in industry
10 practice for anything other than the type of
11 geotechnical investigation and structural design
12 per Uniform Building Code practices that would be
13 employed for this type of site or this type of
14 facility.

15 Q And -- and I can respect that opinion,
16 and I'm not trying to be argumentative. I just
17 want to state for the fact that as far as you
18 know, there's no modeling of that power plant that
19 -- proposed for that site, for seismic conditions.

20 A Various elements of the proposed project
21 would be subject to different analytical
22 procedures. I don't know whether you would
23 consider them modeling, or whether you would look
24 at them simply as a calculation. There are
25 various mathematical representations of

1 structures, some of which lend themselves to
2 manual calculations and others which either
3 require, or are more conveniently done by
4 numerical methods, using computers. But the
5 building code would allow the design engineer the
6 discretion to choose the appropriate method and
7 criteria, subject to the approval of the chief
8 building official.

9 Q Once that's chosen, is there any plans
10 to do any modeling to ensure safety for my family
11 and my -- my friends in the neighborhood?

12 A All of the structures in the Metcalf
13 Energy Center that are subject to the Uniform
14 Building Code, and I can't think of any that are
15 not, would require seismic analysis to be
16 performed by a registered professional engineer,
17 and reviewed by the chief building official, who
18 will retain the services of registered
19 professional engineers to perform that review.

20 Q Would that be similar to what -- when
21 you use the word modeling in this whole procedure,
22 where you use the word modeling of air pollutions
23 and things like -- would that be the same?

24 MR. HARRIS: I would object. You've
25 lost me. I've been doing this for a while, but

1 I'm confused.

2 HEARING OFFICER VALKOSKY: Yeah. It's

3 --

4 MR. AJLOUNY: Well, I want to ensure
5 when, first of all, the way I understand it,
6 there's no -- no one knows how this is going to be
7 built today, and then when someone does decide, I
8 just want to be assured that some kind of modeling
9 -- people are saying oh, yeah, this is going to --

10 HEARING OFFICER VALKOSKY: Okay. I
11 think I -- I think we're getting too hung up on
12 the word "modeling". And you're certainly free to
13 explore this with the witness, because it's
14 relevant. Also, with Mr. Baker, for Staff's
15 witness. But I'd like to -- as Staff's witness.
16 But I'd like to point out the condition, proposed
17 Condition Structural 1, deals with design of the
18 building and the proposed lateral force
19 procedures, designs, plans, and drawings for the
20 structures that will be erected there.

21 I believe that's what Mr. Dunstan was
22 talking about, as -- as far --

23 THE WITNESS: That's correct.

24 HEARING OFFICER VALKOSKY: -- as
25 analysis.

1 THE WITNESS: That's correct. And there
2 is discussion of certain types of structures that
3 might require dynamic analysis, but it should be
4 understood that in some cases, that dynamic
5 analysis is actually a manual calculation.

6 MR. AJLOUNY: Yeah, and I guess that's
7 my concern. That's the point I wanted to bring
8 up.

9 HEARING OFFICER VALKOSKY: Right. And I
10 -- I think, you know, there's -- there's a
11 misunderstanding. Modeling, calculation, you
12 know, to -- to technical people, these can have
13 different meanings. And as -- as I understood,
14 and please, Mr. Dunstan, correct me if I'm wrong,
15 there will be a professionally acceptable
16 analysis, and let me use that term, to -- to
17 encompass calculations, plans, drawings, whatever,
18 done for the structures on the -- as part of the
19 -- the Metcalf project. Is that correct?

20 THE WITNESS: That is correct. And
21 those calculations will be reviewed by the chief
22 building official, and they have to be accepted by
23 the chief building official.

24 HEARING OFFICER VALKOSKY: That's
25 provided for.

1 MR. AJLOUNY: Well, good. I'm glad you
2 helped me out with that. Then I guess the word is
3 analysis.

4 BY MR. AJLOUNY:

5 Q So in that analysis, is there a number
6 chosen, as far as a seismic, you know, a 7.0, 7.5,
7 an 8.0 type of earthquake, is there a standard on
8 when this analysis is done that this power plant
9 will be able to, you know, handle a 10.0
10 earthquake? I mean, is there a number associated
11 with that standard, or that analysis?

12 A I think the witnesses on Geology
13 discussed how the potential magnitudes of
14 earthquakes in the vicinity of the site would have
15 to be evaluated in the geotechnical report.
16 Those, in my experience -- and I am not a
17 geotechnical engineer -- in my experience, those
18 evaluations conclude with recommendations as to
19 the appropriate peak ground acceleration that
20 would be used in the design of structures for the
21 specific project at the specific site.

22 So while the -- the design engineer does
23 not work with a Richter magnitude or a moment
24 magnitude earthquake, they do work with a
25 parameter derived from evaluations of earthquake

1 magnitudes, and I think we've heard the geologists
2 earlier mention some of the -- the magnitude
3 potentials of -- of some of the known active
4 faults in the vicinity of the site.

5 Q Well, you being the Facility Design
6 person, that topic, do you have a number in your
7 head that you work by of seismic issues of what
8 that plant will be able to withhold? Is -- if
9 there's --

10 A No, I don't.

11 Q Do you ever use that as -- in any of
12 your plants, as a number?

13 A It -- it is not recognized by any
14 building code I'm aware of, and particularly not
15 recognized by the California Building Code.

16 Q Okay. Another topic, or area, and the
17 same thing. Will you have any problem having a
18 team of public citizens involved with the process
19 as the design's being done, and being part of that
20 process, and not just we have to go to the library
21 and look for it, but actually being involved and
22 getting things sent to us?

23 MR. HARRIS: I'm going to object to
24 this. I don't think this is the proper witness
25 for this question.

1 MR. AJLOUNY: Where would I ask it,
2 then?

3 MR. HARRIS: I'm not sure what the
4 question is, but I'm pretty sure it's not Facility
5 Design.

6 HEARING OFFICER VALKOSKY: I think the
7 question -- the question involves the feasibility
8 of establishing a -- and I'm using this term
9 loosely -- a citizens advisory or citizens review
10 group to basically track the progress of the
11 design and construction of the plant. Is that
12 correct?

13 MR. AJLOUNY: Yes. I'd like to do it as
14 Morro Bay has done it.

15 HEARING OFFICER VALKOSKY: Okay. Well,
16 I don't know what Morro Bay has done, but --

17 MR. AJLOUNY: They have sea otters down
18 there. They have a team of nine citizens that are
19 tracking it.

20 HEARING OFFICER VALKOSKY: Well, okay.
21 But that's -- that's the proposal on the table.
22 So -- so Mr. Harris, I'm not sure Facility Design
23 --

24 CHAIRMAN KEESE: I would just observe
25 that Morro Bay has -- has filed an AFC. That's

1 it.

2 MR. AJLOUNY: Well, apparently by --

3 CHAIRMAN KEESE: So there is no formal
4 Energy Commission procedure on Morro Bay, as I
5 understand it, since I'm on the case and haven't
6 even visited yet.

7 MR. AJLOUNY: Really.

8 CHAIRMAN KEESE: So -- so whatever
9 they're doing in Morro Bay, they're doing in Morro
10 Bay.

11 MR. AJLOUNY: Okay. In the -- in the
12 workshop, Duke Energy has agreed to a member of
13 nine citizens to be involved through the whole
14 process.

15 HEARING OFFICER VALKOSKY: Okay. Now --

16 MR. AJLOUNY: And I -- and I kind of
17 like that idea, and I'm wondering if --

18 CHAIRMAN KEESE: Okay -- okay.

19 MR. AJLOUNY: -- where would I approach
20 that --

21 HEARING OFFICER VALKOSKY: Issa, I think

22 --

23 CHAIRMAN KEESE: Talk to those guys
24 after the hearing's over.

25 MR. AJLOUNY: Actually, you won't call

1 me back if I call you.

2 MR. HARRIS: I thought this was covered
3 in general Compliance. There's a condition that
4 Steve Munro talked about for a public -- series of
5 public meetings. I think that --

6 HEARING OFFICER VALKOSKY: Right. But
7 as I recall what -- Mr. Munro's testimony was
8 essentially to the effect dealing with the
9 Crockett Power Plant, and it was something that
10 was initiated by the Applicant.

11 MR. HARRIS: There's a requirement in
12 our FSA for us to hold a series of --

13 HEARING OFFICER VALKOSKY: Okay. Sorry.

14 MR. HARRIS: -- public meetings.

15 HEARING OFFICER VALKOSKY: And in what
16 portio of --

17 MR. HARRIS: It's in the general --

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. HARRIS: -- it was in Mr. Munro's
20 testimony.

21 HEARING OFFICER VALKOSKY: And there is
22 a specific requirement that Applicant hold a
23 series of meetings.

24 MR. HARRIS: Yeah. If you give me a
25 minute I can find it.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. AJLOUNY: Can I clarify something?

3 That's for Compliance. I'm talking about the
4 construction and the whole process of
5 construction, being part of that. Not just, you
6 know, making sure compliance is there. But having
7 the public involved. This is --

8 HEARING OFFICER VALKOSKY: Okay. No, I
9 -- I --

10 MR. AJLOUNY: -- a type of --

11 HEARING OFFICER VALKOSKY: -- I
12 understand that. That's not really a Facility
13 Design question.

14 MR. AJLOUNY: That's one of my biggest
15 -- one of my areas of the design, so that's why
16 I'm bringing it up here. Along with others. But
17 this is the first time that I've placed on the
18 record that I asked to cross examine.

19 HEARING OFFICER VALKOSKY: Well, let's
20 -- let's just continue with this while --

21 MR. AJLOUNY: Okay. So I guess -- so --
22 how do I say this. So you're not the one to ask
23 the question to. I --

24 PRESIDING MEMBER LAURIE: Well, wait a
25 minute. I don't know if you have to ask a

1 question.

2 MR. AJLOUNY: Well, I -- if he -- I --

3 PRESIDING MEMBER LAURIE: You're -- just
4 a --

5 MR. AJLOUNY: Okay.

6 PRESIDING MEMBER LAURIE: You're making
7 a request for a citizens group.

8 MR. AJLOUNY: Yes.

9 PRESIDING MEMBER LAURIE: To provide
10 input during the course of construction.

11 MR. AJLOUNY: Yes.

12 PRESIDING MEMBER LAURIE: Mr. Valkosky,
13 there's no reason why the Committee cannot take
14 that under consideration.

15 HEARING OFFICER VALKOSKY: No, I -- I
16 agree.

17 MR. AJLOUNY: Okay. Well, that's -- and
18 I didn't know. I guess I wanted to ask the
19 witness if he didn't have a problem and would
20 encourage you to -- to go that way. Because I
21 know last time I made some suggestions or ideas,
22 that they -- I don't hear any results from them.
23 So if I need to do something formal --

24 PRESIDING MEMBER LAURIE: If the
25 Committee wanted to impose it, it wouldn't make

1 any difference whether the witness had a problem
2 with it or not, just as long as the Applicant
3 agreed to it.

4 MR. AJLOUNY: Yeah. Okay.

5 MR. HARRIS: I have the page reference.
6 Page 683, there's a discussion of periodic
7 community meetings, and it talks about prior to
8 and during construction, the project owner shall
9 conduct community meetings at appropriate times
10 and locations.

11 HEARING OFFICER VALKOSKY: Okay. Prior
12 to and during construction.

13 MR. HARRIS: Right, 683.

14 MR. AJLOUNY: But again, I'm -- I'm not
15 talking about those meetings, or compliance. I'm
16 talking about being involved.

17 HEARING OFFICER VALKOSKY: No. No, this
18 is -- this is prior to and during construction.
19 Okay? That, I think, covers the span that you're
20 talking about.

21 MR. AJLOUNY: Well, I -- I don't, but --

22 MR. WILLIAMS: It talks about -- but not
23 the scope.

24 HEARING OFFICER VALKOSKY: Mr. Williams,
25 please.

1 MR. AJLOUNY: Well, I can -- I
2 appreciate any help I can get, because I don't do
3 well with this. But --

4 (Inaudible asides.)

5 MR. AJLOUNY: Yeah. Well, I -- I --
6 Paul, I -- maybe there's just a lack of trust in
7 -- in what I've seen so far, so I just want to be
8 involved. I'm willing to put my time into it, and
9 continue my time, from today until it's completed,
10 if it's even approved. So --

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. AJLOUNY: -- I want to make -- I
13 guess whatever you want to call it, I want to be
14 involved on a daily basis. I mean, if, you know,
15 when the design's going in, I want to know --

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. AJLOUNY: -- that beam's going to be
18 put up there --

19 HEARING OFFICER VALKOSKY: Okay. That
20 -- that point is made, and I think the --

21 MR. AJLOUNY: Okay. Great.

22 HEARING OFFICER VALKOSKY: -- the
23 Committee has heard enough.

24 MR. AJLOUNY: So I don't have --

25 HEARING OFFICER VALKOSKY: And will

1 certainly consider it.

2 MR. AJLOUNY: Thank you.

3 HEARING OFFICER VALKOSKY: I don't think
4 that's necessary.

5 MR. AJLOUNY: It's very -- it's a very
6 big concern. I really do appreciate the
7 consideration of that, because I -- it's very
8 important to me.

9 And then I think other than that area --
10 that's it for me.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you. Mr. Williams.

13 MR. WILLIAMS: Thank you, Mr. Valkosky.
14 Bob Williams here.

15 First, for some reason, I guess it's
16 because the '49ers are not playing football games,
17 I found it amusing to read the siting regulations
18 over the past several days. And on page -- I'd
19 like to direct your attention to page 84 and 85.
20 If I may just briefly highlight what they say.

21 HEARING OFFICER VALKOSKY: What section
22 are you referring to?

23 MR. WILLIAMS: In the section entitled
24 System Reliability, I'm referring now to the
25 Commission's siting regulations, and the article

1 is in Appendix A, under -- it follows, begins on
2 page 80. But --

3 MR. HARRIS: What's the code section
4 number?

5 MR. WILLIAMS: Well, it's on page 84 --

6 HEARING OFFICER VALKOSKY: What's the
7 title of the section?

8 MR. WILLIAMS: -- page 84 --

9 MR. HARRIS: Of what?

10 MR. WILLIAMS: -- of the Commission's
11 Power Plant Site Certification Regulations, by the
12 California Energy -- Rules of Practice and
13 Procedure, the Power Plant Site Certification
14 Regulations.

15 HEARING OFFICER VALKOSKY: Oh, there --
16 there should be a section number there that would
17 --

18 MR. WILLIAMS: Well, it's Appendix A to
19 the long chapter. But there's one section that
20 describes what should be in System Reliability,
21 and at the top of page 85 there's another section
22 that says, an assessment of the long term
23 availability of the fuel or fuels proposed for the
24 facilities, at prices consistent with those
25 assumed in subsection H, and a discussion of the

1 principal uncertainties in providing assurance of
2 reliable supply of fuel over the expected
3 operating life of the facility.

4 CROSS EXAMINATION

5 BY MR. WILLIAMS:

6 Q Mr. Dunstan, to your knowledge, has the
7 project, that is Calpine or yourself, submitted
8 any description of the availability and
9 reliability of fuel supply?

10 MR. HARRIS: I want to object until we
11 find out where you are, Bob. I'm not quite sure
12 this is the witness.

13 MR. WILLIAMS: I thought you had the --

14 MR. HARRIS: My pages --

15 MR. WILLIAMS: -- pages on your
16 computer, page 85.

17 MR. HARRIS: -- page numbers are not the
18 same.

19 HEARING OFFICER VALKOSKY: Let's go off
20 the record, please.

21 (Off the record.)

22 MR. WILLIAMS: I appreciate your help.

23 Okay. In Appendix B, which is the
24 regulations that apply to an AFC, it asks for in
25 the section on Reliability, a discussion of the

1 sources and availability of the fuel or fuels to
2 be used over the estimated service life of the
3 facility. This is on page 107. I'd be happy to
4 loan you my copy.

5 MR. HARRIS: Can you give us a section
6 reference?

7 MR. WILLIAMS: It's Appendix B, under
8 Section 2012, is the way it appears in my copy.
9 There is a long series which -- which are the
10 appendices to the chapter, and they go Appendix A,
11 Appendix B, and Appendix C.

12 MR. HARRIS: Uh-huh.

13 MR. WILLIAMS: And Appendix B applies to
14 normal power plants.

15 MR. HARRIS: Right, data adequacy
16 requirements for power plants.

17 MR. WILLIAMS: And in particular,
18 because I believe that the Reliability section is
19 deficient in discussing the sources --

20 HEARING OFFICER VALKOSKY: Okay. Mr. --

21 MR. WILLIAMS: -- of fuel --

22 HEARING OFFICER VALKOSKY: -- Mr.
23 Williams, we've done this at least once. This was
24 data adequacy determination. That is what these
25 regulations that I believe you're referring to

1 apply. And Mr. Richins explained this earlier.

2 The determination that Staff makes is
3 whether the AFC filing contains the required
4 information, as specified in the appendix.

5 Remember, we then -- or the Staff then makes a
6 recommendation to the Executive Director, who in
7 turn makes a recommendation to the Commission, who
8 in turn decides whether or not to begin
9 processing. That's been done back in June '99.

10 MR. WILLIAMS: Well, I -- I'm
11 suggesting, with all due respect, that there may
12 be some gaps. So I'm asking Mr. Dunstan where is
13 there a discussion of the expected annual and
14 lifetime capacity factors. He just submitted
15 several references to the docket, 6 and 10 of the
16 AFC. Ten and -- 10A through 10Q of the --

17 HEARING OFFICER VALKOSKY: Okay. Then
18 --

19 MR. WILLIAMS: So my question briefly --

20 HEARING OFFICER VALKOSKY: Mr. Dunstan,
21 is the expected gas availability for the project
22 discussed in any of the Applicant's filings? And
23 if so, which ones?

24 MR. HARRIS: I believe it -- I don't
25 want to answer for my witness, but I believe

1 that's a data adequacy requirement, and we must've
2 hit that mark. So let me -- let me look for it, I
3 guess, in the AFC.

4 HEARING OFFICER VALKOSKY: Right. I --
5 I understand the data adequacy portion.

6 MR. WILLIAMS: Well, and then --

7 HEARING OFFICER VALKOSKY: Let me
8 rephrase that. Is there -- is there anything
9 additional to whatever may be contained in the --
10 the AFC, that would deal with this issue?

11 THE WITNESS: I don't believe there's
12 anything additional. We -- we've said --

13 HEARING OFFICER VALKOSKY: Okay.

14 THE WITNESS: -- that PG&E has indicated
15 that they will supply fuel to us.

16 HEARING OFFICER VALKOSKY: Right. There
17 you --

18 MR. HARRIS: One reference in Section
19 2.4.3 of the AFC.

20 MR. WILLIAMS: Thank you. I didn't
21 bring that with me, so I'll have to go look at it.

22 BY MR. WILLIAMS:

23 Q Let me then just close by raising one
24 additional question.

25 Mr. Boyd went to the trouble of making a

1 submittal to this proceeding, and in his December
2 20th submittal on page 10, there is a section on
3 Efficiency, Reliability, and Facility Design. And
4 my question to Mr. Dunstan is did you have an
5 opportunity to notice the CARE submittal? And
6 particularly page 10.

7 A I don't recall that submittal.

8 Q I don't blame you.

9 (Laughter.)

10 MR. WILLIAMS: I have a hard time
11 reading all of Mike's stuff, too.

12 I would also direct your attention, that
13 submittal contain a survey by an economist that
14 Mr. Boyd was willing to bring to this proceeding,
15 had there been any receptivity. His name was
16 William P. Kucewicz, spelled K-u-c-e-w-i-c-z.

17 I offer that for the purpose of the
18 Evidentiary Hearing, that it is possible to
19 address the issue of reliability of gas supply.
20 And the Applicant should, in my opinion, be asked
21 to do that.

22 HEARING OFFICER VALKOSKY: Okay. Thank
23 you, Mr. Williams.

24 Anything further?

25 Mr. Wade.

1 MR. WADE: Thank you. I actually have
2 just a couple of brief questions to follow up for
3 Mr. Dunstan. One having to do with the -- the
4 subject of gas turbine F class turbine efficiency.

5 CROSS EXAMINATION

6 BY MR. WADE:

7 Q Could you explain what is it that --
8 what does -- what does the class designation mean?

9 A The class designation really refers to a
10 range of turbine inlet gas temperatures. The
11 significance is that the temperature at which the
12 combustion gases enter the expansion section of
13 the turbine have a direct effect on the efficiency
14 of the machine. Higher temperature is proved as
15 higher efficiency.

16 Q Okay. Is -- is there no other gas
17 turbines of -- of classes that would be applicable
18 to this power plant, that are more efficient?

19 A I'm not aware of any more efficient
20 combustion turbine in this size that is
21 commercially available. There are -- there are
22 advanced machines that variously carry the
23 designations G or H, that are under prototype
24 testing. But my understanding is that they are
25 not commercially available for fleet production,

1 and will not be within the timeframe of this
2 project.

3 Q Okay. Thank you.

4 My other question has to do with the
5 testimony in your introduction, where you
6 specified that this power plant would make use of
7 -- 80 percent of its water would come from a
8 recycled water source. Is that -- was that your
9 testimony?

10 A The project, as we've proposed it, would
11 use recycled water for all of its cooling needs,
12 except for those periods when the supply of
13 recycled water would be interrupted.

14 Q Yes. Regarding that water, do you have
15 an agreement for provision of that water to your
16 --

17 MR. HARRIS: I'm going to object to this
18 again, on the basis that it's not a proper subject
19 for this testimony.

20 MR. WADE: I believe that I'm asking
21 questions that relate to the witness's testimony.
22 Only that.

23 HEARING OFFICER VALKOSKY: Mr. Wade, I
24 thought we agreed earlier that questions about the
25 water supply would be most appropriately addressed

1 under Water Resources. Is that not correct, Mr.
2 Harris?

3 MR. HARRIS: That's my recollection,
4 yes.

5 HEARING OFFICER VALKOSKY: Yeah. Just
6 -- just that then we'll have the witnesses that
7 are actually dealing with it here.

8 MR. WADE: Okay. I -- I'll --

9 HEARING OFFICER VALKOSKY: Okay. It's
10 certainly fair to ask at that time.

11 CHAIRMAN KEESE: I do have a question
12 for -- I do have one question for the witness.

13 Have you -- are you testifying that
14 there is a specific piece of equipment that you
15 plan to put in this facility, or are you retaining
16 the option to put a piece of equipment in, you
17 know, Frame 7, FG, whatever, at the time that you
18 build it?

19 THE WITNESS: The combustion turbine
20 generators that would be installed in the Metcalf
21 Energy Center will be Siemens Westinghouse Model
22 501FD, Phase 2.

23 CHAIRMAN KEESE: Okay. And you're --
24 and you're putting that in -- are we approving --
25 are you asking us to approve a project with that

1 turbine, or are you asking us to approve a project
2 that will deliver what that type of a turbine
3 would deliver in a project like this?

4 THE WITNESS: We are asking for the
5 latter. That is, approval of a project with the
6 characteristics that would be produced by those.

7 HEARING OFFICER VALKOSKY: Okay. Is
8 there anything further, Mr. -- you've had one bite
9 already.

10 MR. AJLOUNY: I -- I know, but you know
11 what, I brain checked. I was Facility Design, and
12 I forgot the other two.

13 HEARING OFFICER VALKOSKY: All right,
14 then --

15 RE-CROSS EXAMINATION

16 BY MR. AJLOUNY:

17 Q And I know I even mentioned -- I just
18 have one quick reference of the San Jose fire
19 letter that I don't remember receiving. I just
20 wondered what -- in general, can you just say what
21 it stated, real quick?

22 A You're referring to the letter to Mr.
23 Chou?

24 Q You said something about a San Jose Fire
25 Department --

1 HEARING OFFICER VALKOSKY: Yeah, we
2 identified it as an exhibit.

3 MR. AJLOUNY: Did we get that yet? Was
4 it mailed to us yet?

5 THE WITNESS: It was served and
6 docketed. Am I going to have to fire my
7 secretary? I'm sorry.

8 HEARING OFFICER VALKOSKY: Okay. Could
9 you just summarize the contents of that letter?

10 THE WITNESS: That letter addressed
11 actually issues related to criteria for fire
12 protection systems, and plant access.

13 MR. AJLOUNY: Well, I guess the only
14 comment I want to make is my witness is from -- is
15 going to be talking about responding to a hazard
16 or a fire, whatever, so --

17 HEARING OFFICER VALKOSKY: I understand
18 that.

19 MR. AJLOUNY: -- I don't know if I can
20 reference that letter in that topic, or how that
21 works. But I just wanted to make that statement,
22 that that was one my concerns. And --

23 HEARING OFFICER VALKOSKY: If the letter
24 relates to things that are relevant for the topic
25 of Hazardous Materials/Traffic and Transportation

1 --

2 MR. AJLOUNY: Okay.

3 HEARING OFFICER VALKOSKY: -- sure.

4 MR. AJLOUNY: Okay.

5 HEARING OFFICER VALKOSKY: Because we
6 understand that's when your witness will be
7 testifying.

8 MR. AJLOUNY: Okay.

9 HEARING OFFICER VALKOSKY: Okay. Is
10 there anything else for Mr. Dunstan?

11 Thank you, sir. You're excused.

12 Oh, I'm sorry. Mr. Garbett -- do you
13 have a question or a comment, or --

14 MR. GARBETT: I have three areas or
15 points that I just have brief questions on.

16 HEARING OFFICER VALKOSKY: Well, make
17 your comments and we'll see if --

18 MR. GARBETT: The first area is, is
19 there is much to do there that the plant will meet
20 the structural requirements that I am worried
21 about. For instance, the earthquake thrusting
22 upon rotating machinery caused a processional
23 effect, causing it to dismount from its base and
24 walk across. I have been witness to one of these
25 in an earthquake in past years, and I'm wondering

1 what the processional effects are, whether the
2 turbine blade clearances are sufficient within the
3 chambers that would allow that and other effects
4 to this nature.

5 HEARING OFFICER VALKOSKY: Okay. What
6 are your other two comments?

7 MR. GARBETT: The next one is, is to the
8 Reliability, going into the fuel supply or
9 alternative fuels. This was brought up in a
10 number of workshops. So far the witnesses only
11 talk about a tacit agreement, both with fuel and
12 with water. And we're wondering about with fair
13 market conditions, are they going to bring in
14 liquid natural gas, for instance, from Indonesia,
15 through the San Francisco Bay, and how would it be
16 delivered.

17 Is there other alternative fuel sources
18 available for dilution of natural gas, with --

19 HEARING OFFICER VALKOSKY: Okay. Got
20 it. What's your next --

21 MR. GARBETT: The next concern is with
22 the Reliability, is the long term reliability of
23 the engines being two engines simultaneously
24 operating, side by side, sympathetic vibrations
25 and long term fatigue, as to the possibility of,

1 for instance, taking the intake lengthening of one
2 and the other lengthening the exhaust slightly to
3 go and spread the noise spectrum to reduce it, and
4 to go and prevent the sympathetic vibrations from
5 causing early fatigue of the engines.

6 HEARING OFFICER VALKOSKY: Okay. Mr.
7 Dunstan, is there any other fuel, other than -- is
8 there a fuel other than natural gas which is
9 proposed for use at the plant?

10 THE WITNESS: No.

11 HEARING OFFICER VALKOSKY: Are you
12 familiar with the processional effects that Mr.
13 Garbett referred to?

14 THE WITNESS: Only to the extent that I
15 have some education in dynamics. I've never heard
16 of any such issue pertaining to combustion turbine
17 generators in power plants.

18 HEARING OFFICER VALKOSKY: Okay. Thank
19 you. And regarding his last question, in terms of
20 long term reliability. Is there anything you can
21 add to the record on that concern?

22 THE WITNESS: There are dozens of multi-
23 engine combined cycle generating facilities in
24 operation all over the world, and I have never
25 heard any report of the type of phenomenon the

1 questioner has described.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you, sir.

4 MR. HARRIS: Mr. Valkosky, I have one
5 question on redirect that I wanted to --

6 HEARING OFFICER VALKOSKY: Sorry. Of
7 course.

8 REDIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q Mr. Dunstan, there was some discussion
11 about the acreage, and I just want to ask you a
12 question. Can you safely and reliably construct,
13 operate and maintain the plant on the proposed
14 acreage?

15 A Yes.

16 MR. HARRIS: Thank you.

17 HEARING OFFICER VALKOSKY: Okay.
18 Anything else for Mr. Dunstan? Thank you, sir.

19 THE WITNESS: Thank you.

20 HEARING OFFICER VALKOSKY: Ms. Willis.

21 PRESIDING MEMBER LAURIE: Mr. Valkosky,
22 please make inquiry of the Intervenor parties as
23 to what their intentions are regarding cross
24 examination of Mr. Baker.

25 HEARING OFFICER VALKOSKY: Mr. Scholz.

1 MR. SCHOLZ: Repeat one of the questions
2 to see if he concurs with Mr. Dunstan.

3 HEARING OFFICER VALKOSKY: One question?

4 MR. SCHOLZ: One question.

5 HEARING OFFICER VALKOSKY: One question.

6 Okay. Mr. Wade.

7 MR. WADE: I just have one --

8 HEARING OFFICER VALKOSKY: Pardon me?

9 MR. WADE: I also have one question just
10 like Scott's.

11 HEARING OFFICER VALKOSKY: Okay. Issa?

12 MR. AJLOUNY: My questions are in
13 regards to his knowledge of any other issues of
14 gas supply and on power plants in California, what
15 effect it's had on, you know, what domino effect
16 it's had. I happen to know of some other
17 instances where there has been shortages of gas
18 supply.

19 HEARING OFFICER VALKOSKY: Okay. But
20 you're going to ask questions, you're not going to
21 testify on those; right?

22 MR. AJLOUNY: I'm going to ask him if
23 he's aware of them.

24 HEARING OFFICER VALKOSKY: Fine. Thank
25 you.

1 MR. AJLOUNY: Hey, I'm getting good at
2 this now.

3 HEARING OFFICER VALKOSKY: Mr. Williams.

4 MR. WILLIAMS: I'll have similar couple
5 of questions that I forgot to ask the first time,
6 in different areas.

7 HEARING OFFICER VALKOSKY: Okay. So
8 we're looking at one question, one question, a
9 couple, and a couple.

10 Mr. Garbett, do you have any questions?

11 MR. GARBETT: It'll just be redirect the
12 natural gas question as far as alternative
13 sources, such as liquefied natural gas --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. GARBETT: -- and why the omission in
16 the FSA. When it was requested specifically three
17 different times during prior hearings, prior to
18 the PSA.

19 HEARING OFFICER VALKOSKY: Okay. Fine.

20 With that --

21 MS. WILLIS: Okay. Mr. --

22 HEARING OFFICER VALKOSKY: -- swear the
23 witness, please.

24 MS. WILLIS: -- Baker.

25 (Thereupon Steve Baker was, by the

1 reporter, sworn to tell the truth,
2 the whole truth, and nothing but
3 the truth.)

4 PRESIDING MEMBER LAURIE: Ms. Willis,
5 with your questions, please be direct and to the
6 point. Mr. Baker, in your responses, please be
7 direct, concise, and to the point.

8 MS. WILLIS: Thank you.

9 TESTIMONY OF
10 STEVE BAKER
11 called as a witness on behalf of the Commission
12 Staff, being first duly sworn, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WILLIS:

16 Q Mr. Baker, could you please state your
17 name for the record?

18 A Steve Baker.

19 Q And what is your job title?

20 A Senior Mechanical Engineer.

21 Q What are your duties as included as part
22 of your job responsibilities in the Metcalf
23 Project?

24 A I prepared the Staff testimony on
25 Efficiency and Reliability. I co-authored the

1 Staff testimony on Facility Design, and I provided
2 the senior technical review of those three areas,
3 plus Noise, Geology, and Paleontology.

4 Q Did other Staff members also assist in
5 preparing the Facility Design testimony?

6 A Yes.

7 Q And could you please state those -- the
8 names of those Staff members.

9 A Al McCuen, Kisabuli, and we had some in
10 put from Mr. Anderson, our Geologist.

11 Q Are you sponsoring this testimony on
12 Facility Design today?

13 A Yes.

14 Q Do you have any changes or corrections
15 to your Facility Design testimony?

16 A Just the one change that was earlier
17 referred to, the change in Condition of
18 Certification GEN-3.

19 Q And that has been identified as part of
20 Exhibit 11.

21 Do the opinions contained in your
22 testimony in Facility Design, Efficiency and
23 Reliability represent your best professional
24 judgment?

25 A Yes.

1 Q And could you please provide a brief
2 summary of Facility Design?

3 A Facility Design is a fairly narrow and
4 constricted area for us. What we do in Facility
5 Design is simply assure ourselves that the
6 Applicant is aware of the engineering laws,
7 ordinances, and codes that he must comply with in
8 designing and constructing the project. And then
9 we propose a set of Conditions of Certification
10 that, if adopted by the Commission, would ensure
11 that the Commission monitors the compliance with
12 these codes.

13 Q Does that conclude your summary?

14 A Yes.

15 Q And could you also please provide a
16 brief summary of your testimony in Reliability?

17 A Reliability is an interesting area,
18 because there are no laws or codes referring to
19 this area. What we do here is this. We look at
20 the project to see that it will be as reliable as
21 the majority of power plants currently on the
22 utility system. The thought behind this is that
23 if the plant were sufficiently unreliable, then it
24 might cause problems when the dispatcher tries to
25 dispatch it.

1 If the project is as reliable as others,
2 then there will be no surprises, and there will be
3 no impact, negative impact on the state's
4 electrical system reliability.

5 Q Does that conclude your summary of
6 Reliability?

7 A Yes.

8 Q And could you please summarize
9 Efficiency.

10 A Under Efficiency, we do the equivalent
11 of a CEQA analysis, whereby we look for
12 significant adverse impacts on energy resources,
13 or, in this case, fuel supply. We look to see if
14 the project is so inefficient in comparison to
15 feasible alternatives that it would, in fact,
16 create a significant adverse impact.

17 Q And could you please state your
18 conclusions in your testimony on Efficiency?

19 A Our conclusion was that the project is
20 as efficient as any of the feasible alternatives,
21 and therefore there are no adverse impacts in the
22 area of Efficiency.

23 Q Does that conclude your testimony?

24 A Yes.

25 MS. WILLIS: We'd like to move in the

1 sections of the Final Staff Assessment, Facility
2 Design, Reliability and Efficiency into the
3 record, as part of Exhibit 7.

4 HEARING OFFICER VALKOSKY: Okay. And I
5 take it a portion of Exhibit 11, that you referred

6 --

7 MS. WILLIS: Right. Just that portion
8 on the GEN-3.

9 HEARING OFFICER VALKOSKY: Okay. Is
10 there objection?

11 So ordered. Admitted into evidence.

12 (Thereupon the GEN-3 portion of
13 of Exhibit 11 and the Facility
14 Design, Reliability and Efficiency
15 portions of Exhibit 7 were received
16 into evidence.)

17 MS. WILLIS: And this witness is now
18 available for cross examination.

19 HEARING OFFICER VALKOSKY: Before we do,
20 I just have one clarifying question.

21 Mr. Baker, since part of the project is
22 in the city and part of it is in the county, are
23 we potentially dealing with two different CBOs
24 here?

25 THE WITNESS: No.

1 HEARING OFFICER VALKOSKY: How does that
2 work?

3 THE WITNESS: In actuality, the -- if
4 the project is certified and built, the California
5 Energy Commission will be the CBO. Since we don't
6 have qualified staff to perform the duties, we
7 always look to some other appropriate agency to
8 perform those -- those duties in our name. We
9 would invite the local authorities, probably we'd
10 talk to the county first -- or, excuse me, the
11 city first, and if they were not interested in
12 doing the job then we'd ask the county. If they
13 also didn't want to, then we'd go out and find an
14 independent third party qualified to do the work
15 for us.

16 HEARING OFFICER VALKOSKY: Okay. Now,
17 in the event that you talk to the city CBO, the
18 city said yes, I'll be your delegatee, would the
19 city then be doing the inspections and the -- the
20 other type of work for the portions -- for both
21 the portions of the project which are in the city
22 and in the county?

23 THE WITNESS: Yes. There'd be no sense
24 in -- in having a dual --

25 HEARING OFFICER VALKOSKY: Okay.

1 THE WITNESS: -- process.

2 HEARING OFFICER VALKOSKY: Thank you for
3 the clarification.

4 Okay. Cross examination, Mr. Harris.

5 MR. HARRIS: No questions. Thank you.

6 HEARING OFFICER VALKOSKY: Mr. Scholz.

7 CROSS EXAMINATION

8 BY MR. SCHOLZ:

9 Q Mr. Baker, do you agree with Mr. Dunstan
10 that this project could only be designed in a ten
11 acre site, or larger?

12 A I agree with him that he's come up with
13 a reasonable design for the property available.
14 If money is no object, you can squeeze power into
15 smaller spaces, witness a Naval vessel. If you're
16 willing to spend billions of dollars, you can put
17 megawatts into smaller packages.

18 Whether that would be feasible for this
19 project or not, I cannot say. Only Mr. Dunstan
20 and his design engineers could determine that.

21 Q I just picked an arbitrary eight acres.
22 Could you reasonably design economically this
23 project in eight acres?

24 A I don't know.

25 MR. SCHOLZ: Thank you.

1 HEARING OFFICER VALKOSKY: Mr. Wade.

2 CROSS EXAMINATION

3 BY MR. WADE:

4 Q Mr. Baker, regarding the -- the turbine,
5 I'd like to know if you have analyzed H class
6 turbines for this project?

7 A Yes, it's in my analysis as described in
8 my FSA section.

9 Q And --

10 A Efficiency.

11 Q -- is it your opinion that these are not
12 commercially available?

13 A Yes, that's my opinion.

14 Q Yet you -- you analyzed them even while
15 knowing that they're not available?

16 A The first H class machine is, as I
17 understand, currently in licensing, and in fact it
18 may actually have gone into construction. I'm not
19 sure how far along it is. But the first H class
20 machine, as far as I'm aware, has not yet been
21 even started up and -- and proven to operate.

22 Q Which is what you said before. I'm
23 wondering, why did you -- did you analyze H class
24 for this project?

25 A For thoroughness.

1 Q So it was purely hypothetical? As if --

2 A Well --

3 Q As if this were another project in the
4 future that you could use this -- this type of
5 turbine --

6 A At this point in time, I don't believe
7 it's feasible to require anyone to order an H
8 class machine. Very soon, you know, after the --
9 the first one or two machines have operated for
10 awhile and -- and the manufacturer gains
11 experience with them, and -- and the industry
12 gains comfort with them, at that time I think they
13 would be fully commercial and -- and it would be
14 reasonable to expect people to analyze them before
15 selecting the machine for their project.

16 MR. WADE: Okay. Thank you.

17 CROSS EXAMINATION

18 BY MR. AJLOUNY:

19 Q Mr. Baker, are you aware of any power
20 plants in southern California that have
21 intervenors or other power plant manufacturers
22 concerned about the supply of gas in the recent
23 months?

24 A Yes.

25 Q Okay. Which -- which plants are those?

1 A The one that I'm aware of is the Otay
2 Mesa project currently in the Commission's
3 process. But the -- the concerns there are not
4 the ultimate gas supply. That's not a concern at
5 all. The concern there is the inadequacy of the
6 piping system to carry the gas to its customers.

7 Q And in your opinion, do you see any
8 other concerns if that gas cannot be provided for
9 one of those power plants? What other results
10 might occur?

11 A If gas supplies fall to the point where
12 power plants can't get enough gas, then the State
13 of California has problems much, much larger.

14 Q Okay. Is there any issues where if a
15 power plant can't get gas they can revert, if
16 they're -- if they're constructed that way, to oil
17 burning, or other type of burning, instead of
18 natural gas?

19 A There are some older power plants in the
20 state that currently have the ability to switch to
21 an alternate fuel.

22 Q Okay. So your -- your knowledge of the
23 Otay Mesa is the -- the size of the pipes that is
24 constraining the gas flow for maybe another power
25 plant that's concerned?

1 A Yes.

2 Q Okay. Do you see that being an issue in
3 northern California?

4 A I haven't analyzed northern California.
5 If you're asking me if I see it as an issue in the
6 Metcalf case, no, I do not. I believe that the
7 piping system that would supply the Metcalf
8 project is adequate.

9 Q And you believe that supply is there, as
10 we've talked earlier --

11 A Yes.

12 Q -- in California. There's -- do you
13 have any knowledge of the shortage in what we
14 perceive today as consumers of gas supply in
15 California?

16 A We're watching the free market at work.
17 Prices fell, and so the gas suppliers stopped
18 putting money into looking for more gas. Now that
19 the price is rising, I've heard on the news
20 recently that several of the big companies have
21 started dusting off the rigs and they're going out
22 and drilling again. That's how the free market
23 works. That's what we learned in Econ 101. I
24 don't see anything surprising or -- or astounding
25 about what's happening. It's to be expected.

1 Q So nothing alarming to you as far -- you
2 see it more as now that maybe prices are coming
3 up, the industry will drill more and there's
4 probably plenty of natural gas in this country, or
5 whatever, to come up with, to supply this power,
6 this gas to this power plant, or any other power
7 plant in northern California?

8 A Yes.

9 MR. AJLOUNY: Okay. Thank you.

10 HEARING OFFICER VALKOSKY: Thank you,
11 sir.

12 Mr. Williams.

13 MR. WILLIAMS: Yes, Mr. Valkosky.

14 CROSS EXAMINATION

15 BY MR. WILLIAMS:

16 Q My first question relates to what I hope
17 you don't think is speculative or laughable, but
18 it relates to Facility Design provisions to deal
19 with the CO2 discharge.

20 Did requiring any facility provisions to
21 capture CO2 to mitigate global warming cross your
22 mind? Is there any guidance within the CEC that
23 addresses that?

24 A The closest I could suggest is that you
25 discuss that under the topic of Air Quality,

1 because it's totally outside of any of my areas of
2 responsibility.

3 Q Okay. That -- that's a fair answer.

4 I was going to ask you about mitigation,
5 but I'll save that for Air Quality.

6 My recollection is that the alternatives
7 in the design alternatives considered a 14 acre
8 site. Isn't the referenced size for this plant
9 presently 14 acres, rather than 10 acres, or does
10 my memory fail me?

11 A I've gotten so lost in all these
12 bouncing numbers that I really don't know.

13 Q You don't know, either. Okay. Thank
14 you.

15 With respect to the design team, have
16 you had any experience with Morro Bay or with
17 another power plant project that has appointed a
18 citizen oversight committee to monitor the design?

19 A No. As Chairman Keese pointed out,
20 we've only just begun our work on Morro Bay.

21 MR. WILLIAMS: Well, I'd like the record
22 to reflect that I, too, support that idea that Mr.
23 Ajlouny --

24 HEARING OFFICER VALKOSKY: Questions.

25 MR. WILLIAMS: -- mentioned. Thank you.

1 BY MR. WILLIAMS:

2 Q Next question relates to dynamic
3 structural analysis. Have you had any experience
4 with nuclear plant design where they require
5 dynamic analysis using the seismic spectrum, a
6 spectrum of different frequencies and amplitudes
7 for the earthquake analysis?

8 A No. My experience in nuclear plant
9 design didn't go into that area.

10 Q Is there any experience that you have
11 with respect to that type of analysis; that is,
12 consideration of a seismic spectrum with respect
13 to its impact on a plant such as the Metcalf
14 plant?

15 A Trying to -- to work off of the previous
16 testimony we've heard under Geology, before the --
17 the final structural designs are prepared, the
18 geologist, the geotechnical engineer, prepares a
19 report which determines and defines the inputs
20 that are to be used in calculating the structures.
21 Then the California Building Code will specify
22 what methods, models must be used to perform the
23 design of the structures, using the inputs gained
24 from the geotechnical report.

25 Q Oh, forgive me. I have been retired for

1 about seven years, and am not familiar with the
2 latest updates to the California Building Code.
3 In -- in the Area 4, the most severe seismic area,
4 is there any requirement for a spectral analysis,
5 earthquake spectral analysis?

6 What I'm getting at is that seismic
7 design building codes usually say use this size
8 beam, or this -- this amount of rebar, and they
9 don't require that you do analysis. They specify
10 the --

11 A I think you're probably right, as -- as
12 far as simpler structures. But when we get into
13 power plants, the code is -- is a lot more
14 thorough than I believe you're giving it credit
15 for.

16 Q So will a spectral analysis be available
17 to members of the public, then, a -- a seismic
18 spectral analysis of the power plant?

19 A I don't believe so, but I'm not quite
20 sure of that. I don't know what will be made
21 available to the public and what won't. However,
22 I would not propose to the Committee or the
23 Commission that we require anything beyond what's
24 already required by the California Building Code,
25 because I feel the code is adequate in this case.

1 Q But you don't recall at the moment
2 whether that spectral analysis is required?

3 A No, sir. I don't.

4 MR. WILLIAMS: Okay. Thank you.

5 HEARING OFFICER VALKOSKY: Thank you.

6 Mr. Garbett.

7 MR. GARBETT: I have one minor
8 additional question.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. GARBETT: In the local -- in the
11 LORS, the City of San Jose, in Title 20 of their
12 city code or ordinances, goes and refers to noise
13 measurements only being made on the ANSI C scale.
14 Since the FSA goes and only has the ANSI A
15 weighted curves, does this make it an adequate
16 document for LORS?

17 THE WITNESS: I'm going to have to refer
18 you to Noise, which is in Group 2 of the section
19 of hearings.

20 HEARING OFFICER VALKOSKY: Okay.

21 MR. GARBETT: With this response to fuel
22 and alternative fuel supplies and sources, if a
23 pipeline from PG&E would be breached to the south
24 or to the north, for instance, before or after the
25 interconnection is made with Metcalf, would Skaggs

1 Island have enough reserve to basically keep the
2 surrounding community online?

3 THE WITNESS: I have no idea what you're
4 talking about.

5 MR. GARBETT: Okay. Is there a possible
6 source of natural gas, other than PG&E, since
7 there has been no contract made with any supplier.
8 For instance, foreign, liquid natural gas being
9 brought in, or other sources of natural gas?

10 THE WITNESS: The Applicant described in
11 their AFC how they intend to --

12 MR. GARBETT: A sole source.

13 THE WITNESS: -- plan to do that,
14 getting their gas. PG&E will be the transporter,
15 like a trucking company. Where the -- the project
16 owner actually purchases the gas, who they
17 purchase it from, that'll be determined when they
18 go out on the market.

19 MR. GARBETT: The question I have now is
20 --

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. GARBETT: -- as far as the
23 reliability --

24 HEARING OFFICER VALKOSKY: Mr. --

25 MR. GARBETT: -- as the economics, is

1 the transporter puts gas in one end and he pulls
2 it out the other end, and it is unmetered in both
3 cases. The Public Utilities Commission normally
4 had leakage and losses of less --

5 HEARING OFFICER VALKOSKY: Mr. Garbett,
6 you're making a statement. I've given you
7 latitude to ask a question, or make public
8 comment, not both. Which do you choose to do?

9 MR. GARBETT: I was framing the
10 question.

11 HEARING OFFICER VALKOSKY: Just ask the
12 question, if you're going to ask the question.

13 MR. GARBETT: Would there be a
14 possibility of theft of natural gas from the
15 public supply that others would pay for?

16 THE WITNESS: I can't even imagine how
17 that applies to the Metcalf case.

18 MR. GARBETT: Okay. Thank you.

19 HEARING OFFICER VALKOSKY: Is there
20 anything further for Mr. Baker?

21 Ma'am, no. You can -- you can make some
22 comments. If -- go up to the podium. You can --
23 you can make some comments and we'll see if
24 they're relevant to be turned into questions.

25 MS. WONG: Okay.

1 HEARING OFFICER VALKOSKY: Identify
2 yourself, please.

3 MS. WONG: I'm Suzanna Wong. My last
4 name is spelled W-o-n-g.

5 I wanted to know what seismic parameters
6 are passed to design -- facility designers.

7 HEARING OFFICER VALKOSKY: Could you --
8 could you repeat that concern, please?

9 MS. WONG: What seismic parameters are
10 passed to facility designers?

11 HEARING OFFICER VALKOSKY: Mr. Baker, is
12 that anything you can respond to?

13 THE WITNESS: That's a technical
14 question, and I'm a bit too much of a generalist
15 to answer it. But Mr. Anderson's testimony
16 earlier, and -- I think went a long way in
17 explaining what kind of analysis is performed by
18 the geotechnical engineer. And his results then
19 go to the structural and -- steel and structural
20 designers, and they follow the approved, you know,
21 the standard approved methods to do their design.
22 And the CBO uses the standard approved methods to
23 do his design review.

24 MS. WONG: Right. From my understanding
25 just now, it was the -- the seismic person was

1 taking that, you know, they are not expert for the
2 designing. And my understanding is also that the
3 designers are not exactly knowledgeable in terms
4 of the seismic, you know, analysis, or whatever.
5 Could there be possibility that there was overlap
6 that none of you can see it together, because
7 there's no one single person that can handle both
8 thoughts together? And -- and those missing
9 information will constitute --

10 CHAIRMAN KEESE: Mr. Valkosky, I thought
11 I heard .4 to .5.

12 MS. WONG: Right. But they are
13 different motions coming from the earthquakes.
14 There can be many of the effects, they can go into
15 either the plant, you know, the building, the
16 foundations, the -- the turbines, whatever. Can
17 -- can it be that there are gaps in between in
18 which your number, your parameters that have been
19 transferred from one to another are not enough to
20 cover some of the design issues.

21 HEARING OFFICER VALKOSKY: Okay. Mr.
22 Baker.

23 THE WITNESS: We're not inventing a
24 wheel here. The process for doing this design has
25 been worked out and -- and perfected over many

1 years. I have absolutely no reason to expect that
2 anything would fall through a crack.

3 MS. WONG: But are they -- are they
4 designed specifically for earthquake zones?

5 THE WITNESS: Yes.

6 HEARING OFFICER VALKOSKY: And we've got
7 testimony before that this is designed for Seismic
8 Zone 4, which, as I recall the testimony, is the
9 -- is the zone of highest earthquake potential in
10 the world, I believe was the --

11 MS. WONG: But -- but yet no one has
12 been able to give me an answer on the what chance
13 it's safe for.

14 HEARING OFFICER VALKOSKY: As I
15 understand it, that's not the way they -- they
16 judge these --

17 MS. WONG: Well, I think some -- some --
18 someone or some committee should be able, if -- if
19 the people are working together, there should be
20 some person who would be able to give such an
21 assessment.

22 PRESIDING MEMBER LAURIE: Thank you,
23 ma'am.

24 HEARING OFFICER VALKOSKY: Thank you for
25 the comment.

1 Is there anything else on any of these
2 areas? With that, we'll close the record on the
3 topics of Efficiency, Reliability, and Facility
4 Design.

5 I'd like to thank everyone for their
6 long attendance.

7 MR. AJLOUNY: Can I make a comment, just
8 one --

9 HEARING OFFICER VALKOSKY: Sure. Go
10 ahead, Issa.

11 MR. AJLOUNY: For the record, I mean, I
12 do have to work and I don't know how long it'll
13 be, and I might not make it here tomorrow. So for
14 the record, if I could be put in for ten minutes,
15 approximately, for the rest of the topics, for the
16 prehearing part of the --

17 HEARING OFFICER VALKOSKY: Okay.
18 Meaning for the -- for the -- you're talking about
19 the --

20 MR. AJLOUNY: Cross examination.

21 HEARING OFFICER VALKOSKY: The four or
22 five topics that we haven't scheduled yet --

23 MR. AJLOUNY: Yes.

24 HEARING OFFICER VALKOSKY: -- and that
25 we're going to discuss at the Prehearing

1 Conference tomorrow.

2 MR. AJLOUNY: Yes.

3 HEARING OFFICER VALKOSKY: You would
4 like, to the extent that you're not included in
5 there --

6 MR. AJLOUNY: Yeah.

7 HEARING OFFICER VALKOSKY: -- you'd like
8 ten minutes on each of the -- and I believe it's
9 four topics.

10 MR. AJLOUNY: Yes.

11 HEARING OFFICER VALKOSKY: Okay, fine.

12 MR. AJLOUNY: Thank you.

13 HEARING OFFICER VALKOSKY: You bet.

14 PRESIDING MEMBER LAURIE: Wait, wait. I
15 -- I don't understand. Please say again what your
16 request is, and Mr. Valkosky, please say again
17 what your -- what you mean by yes.

18 MR. AJLOUNY: Okay. My request is
19 there's a very high, big, large chance that I will
20 not make it to tomorrow's meeting. And in the
21 Prehearing part of the meeting tomorrow, you're
22 going to -- you're going to discuss who wants to
23 be -- who wants to do cross examination. And I
24 would like to say it today that I'd like to have
25 cross examination, about ten minutes for each

1 topic remaining.

2 HEARING OFFICER VALKOSKY: Yeah. Those
3 are the topics that have not yet been scheduled
4 for hearing.

5 PRESIDING MEMBER LAURIE: Thank you.

6 HEARING OFFICER VALKOSKY: Yeah. Okay.

7 With that, I would like to thank you all
8 for your attendance and participation. We'll
9 reconvene tomorrow, here in this room, at 2:00
10 p.m., and we'll deal with the topic of Cultural
11 Resources, and then the continued portion of the
12 Prehearing Conference.

13 We're adjourned for the evening.

14 (Thereupon the Evidentiary Hearing
15 was adjourned for the evening at
16 10:51 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2001.

JAMES RAMOS

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